

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**



# 76-1319

To be argued by  
DAVID J. GOTTLIEB

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

RICHARD THOMSON FORD,  
a/k/a VINCENT A. THOMAS,  
a/k/a JOHN A. AUGUST,

Defendant-Appellant.

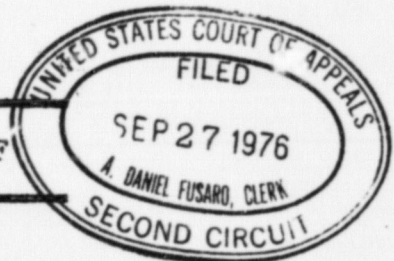
Docket No. 76-1319

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY,  
Attorney for Appellant  
RICHARD THOMSON FORD  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

DAVID J. GOTTLIEB,  
Of Counsel.



PAGINATION AS IN ORIGINAL COPY

JUDGE MOTLEY  
~~Judge [illegible]~~

74 CRIM. 336

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Jed S. Rakoff, AUSA
JAMES PATRICK FLYNN	264-6420
RICHARD THOMSON FORD, a/k/a Vincent A. Thomas,	
a/k/a John A. August.	
	For Defendant:

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(01)					
Fine,					
Clerk, (DEFT # 1 CLST) 2					
Marshal,					
Attorney,					
<del>XXXXXX</del> 18					
<del>XXXXXX</del> 371, 2312, 2113(a) & 2					
Transp. of vehicle stolen in interstate					
commerce. (Ct. 2) Bank robbery (Ct. 3)					
Use of firearm to commit federal felony. (Ct. 4)					
Consp. so to do. (Ct. 1)			(Four Counts)		

DATE	PROCEEDINGS
4-3-74	Filed indictment. (Superseding 74Cr279 and assigned to Bauman, J.)
4-5-74	Deft. prod. on Writ. No appearance by counsel. Pleading adjd to 4-15-74. Deft. cons to being fingerprinted. Assignment of counsel adjd. until 4-8-74. Writ adjd. to 4-15-74. TENNEY, J.
4-15-74	James P. Flynn - B/W ordered. RICHARD T. FORD. Deft. (Atty Present) produced on writ. PLEADS NOT GUILTY. 10 da for motions. BAUMAN, J.
4-15-74	JAMES P. FLYNN - B/W issued.

# JUDGE MOTLEY

74 Cr.336

Page 2

DATE	PROCEEDINGS	CLERK'S FEES			
		PLAINTIFF		DEFENDANT	
4-25-74	RICHARD T. FORD - (Atty Present) Produced on Writ. Trial set for May 28-74. Writ adjd to 5-28-74. Court held deft. in civil contempt. BAUMAN,J.				
5-1-74	Filed notice of appearance by Robert Florsheim, 10 Columbus Cir. NYS., 586-3300.				
5-17-74	Filed Govt. notice of motion to adjourn trial as to deft. Ford.				
5-16-74	Filed one sealed envelope ordered sealed and placed in vault Room 602. BAUMAN,J.				
5-22-74	Filed MEMO END on Govt. motion filed 5-17-74. Motion granted. Trial date Aug. 21-74. So Ordered. BAUMAN,J.				
7-10-74	Filed transcript of record of proceedings, dated April 25, 1974				
JUL 12-74	Filed transcript of record of proceedings, dated MAY 22, 1974				
JUL 12-74	Filed transcript of record of proceedings, dated APRIL 15, 1974.				
JUL 12-74	Filed transcript of record of proceedings, dated APRIL 15, 1974.				
7-12-74	Filed transcript of record of proceedings, dated APRIL 8, 1974.				
9-30-74	RICHARD T. FORD - Filed affdvt. & notice of motion for an order directing the Govt. to furnish all exculpatory evidence				
11-4-74	JAMES PATRICK FLYNN - Filed 1 envelope ordered sealed and impounded and placed in vault in rm.602.....Motley,J.				
11-6-74	RICHARD T. FORD.- Filed memo endorsed on motion filed: For the reasons set forth, in the record this date, The within motion is denied, So ordered Motley, J.				
11-6-74	RICHARD T. FORD.- Filed memo endorsed on motion : The within motion is granted. THE TRIAL OF THIS ACTION IS SCHEDULED to begin on Feb 18, 1975 as to deft. Ford, So ordered. Motley, J.				

DATE	PROCEEDINGS
***	
11-4-74	Govt's motion to adjourn trial to 2-18-75 Granted. Deft Fords motion to dismiss indictment for lack of speedy trial DENIED.....MOTLEY, J.
12-17-74	Filed transcript of record of proceedings, dated Oct. 16, 1974
8-8-75	RICHARD FORD - Filed affdvt. of D.D. Buchwald, AUSA in support of a writ..Ret. 9-2-75.
8-20-75	Filed Govt's requests to charge....
9-4-75	RICHARD T. FORD - Filed notice of motion to dismiss the indictment...With memo endorsed....The motion to dismiss for lack of speedy trial denied.... Motley, J....m/n
9-2-75	RICHARD THOMSON FORD - Jury trial begun before Motley, J.
9-3-75	Trial cont'd.
9-4-75	Trial cont'd.
9-5-75	Trial cont'd.
9-8-75	Trial cont'd.
9-9-75	Trial cont'd. and concluded...Deft Guilty on all counts...P.S.I. ordered Sent. 10-14-75...Writ satisfied.....Motley, J.
9-12-75	<p>FLYNN</p> <p>James Patrick A Closed statistically because</p> <p>(X) defendant ) is</p> <p>( ) co-defendant ) a</p> <p>( ) witness ) fugitive.</p> <p>In all other respects this case is still pending.</p>
10-14-75	RICHARD THOMSON FORD - Filed Judgment (Atty. Ronald Chisholm, present) the deft is committed for imprisonment for a period of FIVE YEARS on each of counts 1, 2, 3 and 4 to run concurrently with each other...It is recommended that the Attorney Gen'l. pursuant to Section 4082 of Ti. 18, U.S. Code, arrange to have this sentence served concurrently with sentence deft is presently serving at Mass. State Prison, in so far as the time that can be served concurrently can be served...MOTLEY, J..... Ent. on 10-15-75-----
11-6-75	R. T. FORD - Filed commitment & entered return. Deft delivered to MASS CORR. INSTITUTION.
11-20-75	Filed transcript of record of proceedings, dated Sept. 8, 9, 1975
12-29-75	Filed transcript of record of proceedings, dated Sept. 2, 3, 4, 5, 1975
05-24-76	R. T. FORD.- Filed notice of appeal from the judgment of conviction entered on the 14th day of October 1975 with memo end. Leave to appeal in forma pauperis is hereby granted; ordered that this appeal be filed nunc pro tunc as of October 20, 1975. MOTLEY, J. Mailed notice to deft. M.C.I. Norfolk P.O. Box 40 Norfolk, Mass. 02056 & U.S. Atty.



74 CRIM 336 (S)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

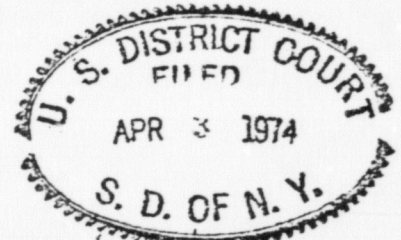
-----x  
UNITED STATES OF AMERICA :

-v- :

JAMES PATRICK FLYNN and :  
RICHARD THOMSON FORD, a/k/a :  
"Vincent A. Thomas," a/k/a :  
"John A. August," :

Defendants. :  
-----x

INDICTMENT



COUNT ONE

The Grand Jury charges:

In or about October, 1971, in the Southern District of New York and elsewhere, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly did conspire and agree with each other and with other persons to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 2312, 2113(a) and 924(c)(1).

It was part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August) the defendants, would unlawfully, wilfully and knowingly transport in interstate commerce from Boston, Massachusetts to Middletown, New York, a motor vehicle, to wit, a blue 1971 Plymouth Fury III bearing Massachusetts registration 43965F, knowing this motor vehicle to have been stolen.

Microfilm

APR 3 - 1974

It was further part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly, by force and violence and by intimidation, would take from the person and presence of another, money in the approximate amount of \$203,938, belonging to, and in the care, custody, control, management and possession of the Orange County Trust Company, Route 211, Middletown, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

It was further part of this conspiracy that JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly would use firearms, to wit, a shotgun and two handguns, to commit a felony for which they may be prosecuted in a court of the United States, namely, the felony set forth in Count Three of this Indictment.

OVERT ACTS

In furtherance of this conspiracy, and to effect its objects, the following overt acts, among others, were committed by the defendants in the Southern District of New York:

1. On or about October 17, 1971, the defendant RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August) resided at the "Sugar's Bungalows," Jersey Avenue, Greenwood Lake, New York under the assumed name of Vincent A. Thomas.

2. On or about October 18, 1971, the defendant JAMES PATRICK FLYNN resided in Room 123 of the Holiday Inn, Middletown, New York, a room then registered under the fictitious name of Robert P. Barry of Lynn, Massachusetts.

3. On or about October 20, 1971, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, entered the Orange County Trust Company, Route 211, Middletown, New York, wearing masks and gloves and carrying firearms.

4. On or about October 20, 1971, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, exited from a beige 1972 Plymouth Fury III with tan vinyl top and entered a blue 1971 Plymouth Fury III, in the Middletown Senior High School parking lot.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

On or about the 18th day of October, 1971, in the Southern District of New York and elsewhere, JAMES PATRICK FLYNN and RICHARD THOMSON FORD, (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly did transport in interstate commerce from Boston, Massachusetts to Middletown, New York, a motor vehicle to wit, a blue 1971 Plymouth Fury III bearing Massachusetts registration 43965F, knowing this motor vehicle to have been stolen.

(Title 18, United States Code, Sections 2312 and 2.)

COUNT THREE

The Grand Jury further charges:

On or about the 20th day of October, 1971, in the Southern District of New York, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly, by force and violence and by intimidation, did take from the person and presence of another, money in the approximate amount of \$203,938, belonging to, and in the care, custody, control, management and possession of the Orange County Trust Company, Route 211, Middletown, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(Title 18, United States Code, Sections 2113(a) and 2.)

COUNT FOUR

The Grand Jury further charges:

On or about the 20th day of October, 1971, in the Southern District of New York, JAMES PATRICK FLYNN and RICHARD THOMSON FORD (who was also known as Vincent A. Thomas and John A. August), the defendants, unlawfully, wilfully and knowingly did use firearms, to wit, a shotgun and two handguns, to commit a felony for which they may be prosecuted in a court of the United States, namely, the felony set forth in Count Three of this Indictment.

(Title 18, United States Code, Sections 924(c)(1) and 2.)

*Tbt* Donald L. O'Shea Paul D. Curran  
PAUL D. CURRAN

SEP 3-1975 TRIAL CONT'D. (JUROR #1 EXCUSED REPLACED BY

SEP 4-1975 TRIAL CONT'D.

SEP 5-1975 TRIAL CONT'D.

SEP 8-1975 TRIAL CONT'D. JURY CHARGE BEGAN, 2:15 <sup>PM</sup>  
JURY DELIBERATIONS BEGUN AT 4:05 <sup>PM</sup>, JURY SENT HOME  
TO RESUME DELIBERATIONS 9-9-75, 9:30 <sup>AM</sup>

SEP 9-1975 TRIAL CONT'D. 9:40 <sup>AM</sup> JURY RESUMED DELIBERATIONS.  
AT 7:25 <sup>PM</sup> JURY RETURNS WITH A GUILTY VERDICT ON ALL  
JURY DISCHARGED. P.S.I. ORDERED, DEFT. ~~SENT TO MASS. STATE PRISON~~ WR  
SATISFIED. SENT. ROTD. TO 10-14-75

OCT 14 1975 DEFT (ATTY RONALD CHISHOLM PRESENT) FORD PROD  
ON A WRIT. - SENTENCED <sup>TO 5 YRS</sup> ON EACH OF COUNTS 1, 2, 3 & 4  
RUN CONCURRENTLY WITH EACH OTHER, SENTENCE ALSO TO  
CONCURRENTLY WITH SENTENCE DEFT IS PRESENTLY SERV  
IN MASS. STATE PRISON. WRIT SATISFIED.

## United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

JAMES PATRICK FLYNN and  
 RICHARD THOMSON FORD, 'a/k/a  
 "Vincent A. Thomas," a/k/a  
 "John A. August,"

Defendant.

## INDICTMENT

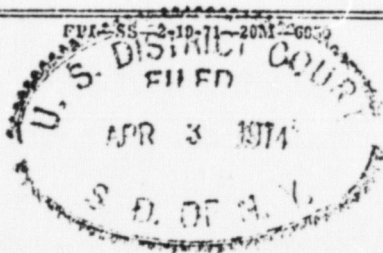
(Violation of Title 18, U.S.C.;  
 §§ 371, 924(c)(1), 2113(a), 2312  
 and 2.)

PAUL J. CURRAN

United States Attorney.

TRUE BILL

Foreman.



APR 5 1974

NO APPEARANCE

PLEADING ADJ TO

RELEASED ON OWN RECOGNIZANCE

GAIL CONTINUED IS

*RN* Deft Consent to being fingerprinted  
 Assignment of Counsel Adj'd  
 until 4-8-74 - writ Adj'd  
 4-15-74 -  
 Tenney, J

APR 15 1974

*ad* James Patrick Flynn - B/w order.  
 Richard Thomas Ford - atty. present. Writ. produced  
 on writ of H/c ad Prosequendum. Deft. Ford  
 pleads Not Guilty. 10 days for motions.

*RH* Bauman, J.

APR 25 1974

Richard Thomas Ford - produced on  
 writ. atty present. Trial set for May 28, 1974.  
 Writ adj'd to 5/28/74. - Paul held deft in  
 Civil contempt.

*RH* Bauman, J.

OCT 16 1974

Hearing on Motion Held & concluded.  
 Motion Denied  
 Motley, J.

NOV 4 - 1974

GOVTS' MOTION TO ADJOURN TRIAL  
 12-18-75 GRANTED.  
 DEFT FORDS MOTION TO DISMISS THE INDICT FOR  
 OF SPEEDY TRIAL DENIED

A TRUE COPY  
 RAYMOND F. BURNARD  
 CLERK

U.S.  
v.  
Flynn  
Ford

gwh 1

843

AFTERNOON SESSION

CHARGE OF THE COURT

2 P.M.

(Motley, J.)

(In open court - jury present.)

THE COURT: Ladies and gentlemen: before formally beginning the charge, I want to thank each of you for your patience and for your cooperation in being prompt and for the careful attention which you have paid to the testimony and other evidence in this case. Also before formally beginning the charge, I would like to thank counsel on both sides for their cooperation to the court and to congratulate each of them on the high degree of professional skill which each has demonstrated throughout the trial.

I trust that you will bear with me now, ladies and gentlemen, and give me that same degree of attention that you have given throughout the trial so that you may carefully understand the legal principles which you are to apply to the facts in this case as you find them.

Now, as you approach the performance of your function in this case, which is to determine the guilt or innocence of this defendant with respect to each charge separately, I want to remind you that it is your duty to weigh the evidence calmly and dispassionately, without sympathy or prejudice for or against either the government or the defendant. You must bear in mind that every defendant

1 gwh 2

2 appearing before this court is entitled to a fair and  
3 impartial trial regardless of his occupation or station  
4 in life.

5 Also the fact that the government is a party  
6 here, that the prosecution is brought in the name of the  
7 United States of America, entitles it to no greater con-  
8 sideration than that which is accorded to any other party  
9 to a litigation. Now, by the same token, it is entitled  
10 to no less consideration. That is because all parties,  
11 government and individuals alike, stand equal before the law.

12 There are four counts in the indictment.

13 Count is simply another word for charge. There are  
14 four charges in the indictment. Your verdict as to each  
15 charge must be based solely on the evidence presented here  
16 in court.

17 As I told you earlier, the evidence in a case  
18 consists of three things: that is, the testimony which you  
19 heard from the witnesses who took the witness stand right  
20 here before you, the exhibits which were actually received  
21 into evidence and, finally, the stipulations as to certain  
22 facts which the lawyers agreed upon and nothing else.

23 Your verdict as to each count must be unanimous  
24 and must be either guilty or not guilty.

25 As the jurors in this case, you are the sole and

1 gwh3

2 exclusive judges of the facts. This means that you pass  
3 upon the weight of the evidence, you determine the  
4 credibility or believability of the witnesses, you resolve  
5 such conflicts as there may be in the evidence and you  
6 draw such reasonable inferences as may be warranted by  
7 the testimony and other evidence in the case.

8 Again, with respect to any matter of fact in  
9 evidence, it is your recollection of what the evidence shows  
10 and yours alone which governs. Anything that counsel for  
11 the government may have said or anything which counsel for  
12 the defendant may have said or anything which I may have  
13 said as to any matter in evidence, any factual matter, is  
14 not to be substituted in lieu of your own independent  
15 recollection of what the evidence is.

16 My function is to instruct you as to the law  
17 applicable to the case and you should accept the law as I  
18 state it to you in these instructions and apply the law  
19 to the facts as you find them.

20 The logical result of that application is a verdict  
21 in the case with respect to each count which I have said  
22 must be returned separately as to each count.

23 I want to caution you that you are not to single  
24 out any one instruction alone as stating the law, but  
25 you must consider the instructions as a whole.

1 gwh4

2 You are not to assume that I have any opinion  
3 as to the guilt or innocence of this defendant or as to  
4 the truth or falsity of any of the charges.

5 The fact that I have denied motions or granted  
6 motions in the course of the trial is not to be taken by  
7 you as any indication that I believe the defendant to be  
8 guilty or not guilty or that the charges in the indictment  
9 are true or false.

10 If during the course of the trial a question  
11 was asked and an objection interposed and I sustained  
12 the objection, you are to disregard the question and any  
13 alleged facts contained in that question. Similarly, if I  
14 ruled that an answer be stricken, you are to disregard both  
15 the question and the answer in your deliberations.

16 During the course of this charge I am going to  
17 refer to some of the facts in evidence. The fact that I  
18 refer to some of the facts or some of the testimony or some  
19 of the exhibits or some of the stipulations does not mean  
20 that I think that that is the only evidence or the most  
21 important evidence that you should consider. You must consider  
22 all the evidence in this case in determining whether the  
23 defendant is guilty of a particular charge which you are  
24 then considering. I will repeat. You must consider all the  
25 evidence in the case when you are considering whether the

1 gwrl

1B

2 defendant is guilty or not guilty of a particular charge.

3 With respect to the testimony of a witness,  
4 you must consider all of the testimony, that is, the  
5 direct examination as well as the cross-examination of that  
6 witness.

7 As you well know, the defendant has entered  
8 a plea of not guilty to each one of the four charges  
9 made against him in this indictment. Consequently, as  
10 I told you when the trial commenced, if the defendant is to  
11 be found guilty of any charge, the government has the  
12 burden of proving that the defendant is guilty of that  
13 particular charge beyond a reasonable doubt. That's a  
14 burden that never shifts. It remains upon the government  
15 throughout the entire trial. It was a burden which the  
16 government had from the very beginning, had throughout the  
17 trial and still has.

18 As I told you, a defendant does not have to  
19 prove his innocence. On the contrary, in a criminal  
20 case in our system a defendant is presumed innocent  
21 of any charge made against him in an indictment. This  
22 presumption of innocence was in the defendant's favor  
23 as the trial started, remained in his favor throughout  
24 the trial, it is in his favor even as I instruct you now.  
25 It remains in his favor even during the course of your

deliberations in the jury room.

This presumption of innocence is removed only if and when after your deliberations in the jury room you come to the conclusion that the government has sustained its burden of proof as to a particular charge, and that is to prove the defendant guilty beyond a reasonable doubt.

The question that naturally comes up is:  
What is a reasonable doubt?

The words almost define themselves. Reasonable doubt is a doubt founded in reason and arising out of the evidence in the case or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all the evidence, the kind of doubt which would make one hesitate to act. It means a doubt that is substantial and not merely shadowy.

Reasonable doubt is one which appeals to your reason, your judgment and your common sense. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant.

If after fair and impartial consideration of all the evidence you candidly and honestly say that you are not satisfied of the guilt of this defendant as to a particular charge and that you do not have an abiding

conviction as to this defendant's guilt, such a conviction as you would be willing to act upon unhesitatingly in important and weighty matters in the personal affairs of your own life, then you have a reasonable doubt, and in that circumstance it is your duty to acquit the defendant.

On the other hand, if after such a fair and impartial consideration of all the evidence you can candidly and honestly say that you are satisfied of the guilt of this defendant, that you do have an abiding conviction of this defendant's guilt, such a conviction as you would be willing to act upon unhesitatingly in important and weighty matters in the personal affairs of your own life, then you have no reasonable doubt, and in that circumstance you may convict the defendant.

A reasonable doubt does not mean a positive certainty beyond all possible doubt. It is practically impossible for a person to be absolutely and completely convinced of any controverted fact which by its nature is not susceptible to mathematical certainty. In consequence, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

You as jurors are the sole judges of the

credibility of the witnesses who took the witness stand right here before you and the weight to be accorded their testimony.

You know, of course, that there is no automatic way to determine who is telling the truth and who is not. Credibility can be equated with believability and reliability. If a witness is credible, you say he is believable and reliable. If he is incredible, you say he is unbelievable. There's nothing mysterious about these words.

By what characteristic are you to judge the credibility of the witnesses?

Each of you has given careful attention to the testimony as it came from the witnesses themselves. You observed the witnesses. Issues of fact are presented for your determination and, to a large extent, the resolution of them depends upon the credibility which you attribute to the witnesses and to the support and lack of support which each witness received from other evidence in the case.

Your duty, therefore, is to decide the disputed issues of fact, and in doing so you use your logic, your reason and your common sense and do not be sidetracked or diverted or distracted by what you consider to be a

1 minor or insignificant detail or irrelevancy or by what  
2 you consider to be not an appeal to your reason or logic,  
3 but to mere sentimentality or unthinking passion. I  
4 repeat: Use your common sense. You should carefully  
5 scrutinize all the testimony given, as I said before,  
6 both direct and cross-examination, the circumstances under  
7 which each witness has testified and every matter in  
8 evidence which tends to show whether a witness is worthy  
9 of belief. Consider each witness' intelligence, motive  
10 and state of mind and demeanor and manner while on the  
11 witness stand. Consider the witness' ability to observe  
12 the matters as to which he or she has testified and whether  
13 he or she impresses you as having an accurate recollection  
14 of these matters.  
15

16 Consider also any relation each witness may bear  
17 to either side of the case and the extent to which, if at  
18 all, each witness again is either supported or contradicted  
19 by other evidence in the case.  
20

21 Inconsistencies or discrepancies in the  
22 testimony of a witness or between the testimony of different  
23 witnesses may or may not cause the jury to discredit such  
24 testimony. Two or more persons witnessing an incident  
25 or a transaction may see or hear it differently, and innocent  
misrecollection, like failure of recollection, is not an

uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

In determining credibility and weight to be given to the testimony of any witness, you must also consider the testimony of the government witnesses. The mere fact that they are employees of the government entitles them to no more and no less consideration than that accorded any other witness.

Nor should you be influenced by the number of witnesses a side has called or the number of documents received in evidence. It is the quality of the testimony and other evidence which counts, not the quantity.

After making your own judgment, you will give the testimony of each witness, such credibility, if any, as you think it deserves.

If you find that any witness has wilfully testified falsely as to any material matter, you may reject the entire testimony of that witness, or you may accept such part or portion as commends itself to your belief or which you find corroborated by other evidence in the case.

Now, there are two classes of evidence recognized and received in courts of justice, upon either of which you may find an accused guilty of a crime. One is called direct evidence, the other is called circumstantial evidence.

Direct evidence is evidence which tends to show the fact in dispute, without need for any other amplification. Although, of course, there is always the question whether that evidence is to be believed.

For example, in this case, there was direct testimony by a witness to the effect that she saw the

1           dhr  
2       defendant Ford shortly after the robbery driving a  
3       beige Plymouth, which the government claims was the  
4       getaway car which the persons who "robbed the bank used to  
5       get away from the bank.    This is simply an example  
6       of what we mean by direct evidence.

7                   Circumstantial evidence, on the other  
8       hand, tends to show other facts from which the fact  
9       in dispute may reasonably be inferred.  It is that evidence  
10      which tends to prove the fact in issue by proof of other  
11      facts, which have a legitimate tendency to lead the mind  
12      to infer that the facts sought to be established are  
13      true.

14                   In other words, circumstantial evidence  
15      consists of facts proved from which the jury may infer  
16      by a process of reasoning other facts in dispute.  In  
17      other words, it is not necessary that the participation  
18      of a defendant be shown by direct evidence.  The defen-  
19      dant's connection to a crime charged may be inferred from  
20      such facts and circumstances in evidence as would  
21      legitimately tend to support such an inference.

22                   For example, in this case the government contends  
23      that the guilt of the defendant has been established  
24      beyond a reasonable doubt.  To a large extent the government  
25      relies upon circumstantial evidence.  In this regard the

1 dhr  
2 government points, for example, and only by way of  
3 example, to the evidence of the defendant's residence  
4 in the area, to his having worked in the area, to his  
5 having cashed his checks in a store directly across  
6 the street from the bank.

7 Now, these are examples of circumstantial  
8 evidence.

9 Knowledge and wilfulness and intent of a  
10 defendant need not be proved by direct evidence. Like  
11 any other fact in issue, it may be established by  
12 circumstantial evidence. In this case, for example,  
13 whether the defendant knew that the car had been stolen  
14 in Massachusetts and whether the defendant knew that  
15 the car thus stolen had been taken across state lines  
16 need not be proved by direct evidence. Like any  
17 other fact in issue, it may be proved by circumstantial  
18 evidence.

19 In every criminal case it is necessary for  
20 the government to prove beyond a reasonable doubt that  
21 a defendant on trial had the necessary criminal knowledge,  
22 wilfulness and intent.

23 Now, questions concerning a defendant's  
24 knowledge involves proof of a defendant's state of mind  
25 at the time of the alleged crime. It is obviously

impossible to prove directly the operation of a person's mind, because you can't look into a person's mind and see what his or her intentions or knowledge was. But the proof of the circumstances surrounding a defendant's activities may well supply an adequate and convincing basis for finding that a defendant had certain knowledge: whether he acted wilfully and intentionally.

In other words, the actions of a defendant must be judged in their time and place just as the full meaning of a word is commonly understood only in its relation to other words in a sentence and its content. So the meaning of a particular act or conduct may depend upon the circumstances surrounding that act or conduct.

In determining the issue of knowledge, wilfulness and intent, you are entitled to consider any statements made by the defendant which are in evidence and any acts done by the accused which are in evidence, and all other facts and circumstances in evidence which may aid you in determining the defendant's state of mind.

Now, as I told you when you were being selected and before the trial commenced, an indictment returned by a grand jury is not proof or evidence. It is merely an accusation; it is merely a technique or method which we employ in our system whereby persons who are

1  
2 accused by a grand jury of crimes are brought into  
3 court, and then their guilt or innocence is determined  
4 by a petit jury or trial jury such as you are.

5 Therefore, the indictment has no evidentiary  
6 value, it shouldn't be considered by you as proving or  
7 tending to prove any of the crimes charged in it.

8 Now, again, with respect to each charge  
9 in an indictment, the government has the burden of  
10 proving to the petit jury that the defendant is guilty of  
11 a particular charge beyond a reasonable doubt.

12 Now, what I am going to do at this time is  
13 to read each charge in the indictment to you, and then  
14 I am going to tell you what the essential elements of  
15 that particular charge are, that is, what the government  
16 must have proved to your satisfaction beyond a reasonable  
17 doubt before you can find the defendant guilty of that  
18 particular charge.

19 As I told you before, the defendant, by  
20 pleading not guilty, has put into issue or put into  
21 dispute the essential elements of each crime charged.

22 Now, the indictment in this case names two  
23 defendants: Richard Ford and James Flynn. Only one,  
24 Richard Ford, is on trial before you. Therefore, he  
25 is the only person whose guilt or innocence you are to

1  
2 announce in your verdict as to each count, although as I  
3 will explain to you shortly in considering his guilt  
4 or innocence you may have to determine the nature of  
5 participation, if any, of the other named defendant,  
6 James Flynn, in this case.

7 In determining the innocence or guilt of this  
8 defendant, you must bear in mind that guilt is personal.  
9 By that I mean the guilt or innocence of this defendant  
10 on trial must be determined separately as to him  
11 with respect to his participation in these crimes. That  
12 determination must be based solely on the evidence or  
13 the lack of evidence as to him.

14 As you know, the indictment arises primarily  
15 out of the October 20, 1971 robbery of the Orange County  
16 Bank in Middletown, New York. The indictment charges in  
17 four counts four separate federal crimes, which the  
18 indictment alleges have been committed in connection with the  
19 planning and execution of that bank robbery.

20 Now, as I told you, I shall discuss the  
21 specific elements of each of these crimes but, broadly  
22 speaking, the four federal crimes charged are, first, the  
23 bank robbery itself; second, the use of firearms, that is,  
24 guns, to commit that bank robbery; third, knowingly  
25 transporting across state lines, from Massachusetts to

1  
2 New York, one of the cars which the government claims  
3 was one of the getaway cars in the robbery and which the  
4 government claims was known to have been stolen; and  
5 fourth, the crime of conspiracy to commit these three  
6 crimes, which, as I shall explain to you in a few moments,  
7 is a separate and distinct crime from the other three  
8 substantive charges.

9 In discussing the charges in the indictment,  
10 therefore, I think it will be simpler instead of following  
11 the order of the indictment to begin in the order which I  
12 have just indicated, that is, I shall begin first with  
13 the bank robbery charge, which is set forth in count 3 of  
14 the indictment.

15 In count 3 the defendant, Richard Ford, is  
16 charged with having violated the Federal Bank Robbery  
17 Statute, and that is Title 18, United States Code, Section  
18 2113(a) and that statute provides in pertinent part  
19 as follows:

20 "Whoever, by force and violence, or by  
21 intimidation takes or attempts to take from the person  
22 or presence of another any property or money or any other  
23 thing of value belonging to or in the care, custody,  
24 control, management or possession of any bank,"  
25 is guilty of a crime.

Count 3 reads as follows:

"On or about the 20th day of October, 1971, in the Southern District of New York, James Patrick Flynn and Richard Thomson Ford, who was also known as Vincent A. Thomas and John A. August, the defendants, unlawfully, wilfully and knowingly, by force and violence and by intimidation, did take from the person and presence of another, money in the approximate amount of \$203,938 belonging to and in the care, custody, control, management and possession of the Orange County Trust Company, Route 211, Middletown, New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation."

Now, in order to find the defendant guilty of this charge you must find the government has established beyond a reasonable doubt each of the five following elements:

First, that on or about the 20th day of October, 1971, the Orange County Trust Company, Route 211, Middletown, New York, was a bank the deposits of which were insured by the Federal Deposit Insurance Corporation;

Second, that on or about the 20th day of October, 1971, the defendant took money from the bank which belonged to or was in the care, custody, control,

management or possession of that bank;

Third, that the money was taken from the person or presence of one or more persons other than the defendant;

Fourth, that the defendant accomplished this taking by force and violence, or by intimidation;

Fifth, that the defendant did so unlawfully, knowingly and wilfully.

Now, with respect to the first three elements of the crime, as I have just enumerated them for you, they seem simple enough and we don't have to have much by way of further explanation.

With respect to the first element you may recall that the parties stipulated that the Orange County Trust Company's deposits were insured by the Federal Deposit Insurance Corporation.

Now, this, as I explained to you, is an element of the crime which the government must prove during the course of the trial and they have offered to prove it by way of this stipulation.

The fourth element needs some explanation. You will recall the fourth element is that the taking of the money must have been accomplished by an act of violence or by intimidation.

Now, with respect to that fourth element,

the government is not required to show that force and violence were actually used against anyone. If it proves beyond a reasonable doubt that the taking was a result of intimidation, that is, a result of placing another person or persons in fear, intimidation may be established by proof of circumstances that are normally and reasonably calculated to arouse fear in the ordinary run of human beings.

So if it happened that some extraordinarily timid person was put in fear by some sort of words or action that would not normally frighten anyone, this would not be the kind of intimidation with which the statute is concerned. On the other hand, if the proof shows conduct by a defendant which would normally be expected to generate fear, then it is not necessary that those affected would actually have experienced some terror or panic or hysteria. The question in short in this respect is an objective one. It is whether the government has sustained its burden of showing conduct of the accused which was of such a nature as to be a sensible and reasonable basis for the generation of fear.

Now, the fifth and final element is that the defendant acted unlawfully, wilfully and knowingly. Now,

1 in order to convict a defendant on this count or any  
2 other count you must find beyond a reasonable doubt that  
3 he acted unlawfully, knowingly and wilfully.  
4

5 Now, unlawfully obviously means contrary to  
6 law. An act is done knowingly if it is done voluntarily  
7 and purposefully, and not because of mistake, accident,  
8 mere negligence or other innocent reason. An act is  
9 done wilfully if it is done knowingly, deliberately,  
10 intentionally and with an evil motive or purpose.

11 In determining whether a defendant has  
12 acted wilfully, it is not necessary for the government  
13 to establish that the defendant knew that he was  
14 breaking any particular law or any particular rule. It  
15 must, however, prove a bad purpose or motive on the part of  
16 the defendant.

17 Knowledge and wilfulness and intent of a  
18 defendant need not be proved, as I have told you before,  
19 by direct evidence. Like any other fact in issue,  
20 it may be established by circumstantial evidence.

21 Now, if you find that the government has  
22 failed to establish any one of those five elements  
23 beyond a reasonable doubt, as I have just enumerated  
24 and discussed them for you, then you must find the  
25 defendant not guilty of the bank robbery charge.

1  
2 On the other hand, if you should find that the  
3 government has sustained its burden of proof as to each  
4 of these five elements, as I have just enumerated and  
5 discussed them as to this defendant beyond a reasonable  
6 doubt, then you may convict the defendant of the bank  
7 robbery charge.

8 There were two eyewitness identifications  
9 shortly after the bank robbery in this case, one by Miss  
10 Whooley with the defendant as the driver of the first  
11 getaway car; and another by Mr. McCoy of the defendant  
12 as the driver of the second getaway car. You will  
13 recall that Mr. Mc Coy later testified that he was not  
14 certain or couldn't be certain as to the identity of  
15 that driver.

16 I charge you that eyewitness testimony is to be  
17 scrutinized with great care. You will recall that the  
18 defendant was a stranger to each of these persons who  
19 identified him, and that each of these persons saw him  
20 only for a short period of time.

21 I want to caution you, moreover, that if,  
22 after considering all of the evidence, you rely wholly  
23 and solely on the eyewitness identification to convict the  
24 defendant, you must find beyond a reasonable doubt that  
25 the witness, Miss Whooley,, has correctly

identified the defendant.

Now we will consider the fourth count in the indictment, the firearms count. With respect to this, the defendant is charged with violating Title 18, United States Code, Section 924(c)(1), which provides in pertinent part as follows:

"Whoever used a firearm to commit any felony for which he may be prosecuted in a court of the United States," shall be guilty of a crime.

And the fourth count reads as follows:

"on or about the 20th day of October, 1971, in the Southern District of New York, James Patrick Flynn and Richard Thomson Ford, who was also known as Vincent A. Thomas and John A. August, the defendants, unlawfully, wilfully and knowingly did use firearms, to wit, a shotgun and two handguns, to commit a felony for which they may be prosecuted in a court of the United States, namely, the felony set forth in Count Three of this indictment."

dhh 1

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Now, in order to find Mr. Ford guilty on count 4, you must find beyond a reasonable doubt that the government has proved each of the three following elements:

First, that on or about October 20, 1971, in the Southern District of New York, which I instruct you as a matter of law includes Middletown, New York, the defendant committed the felony charged in count 3 of the indictment. In other words, in order to find the defendant guilty on this firearms count, you must, as a first step, find that he is guilty of the bank robbery charge;

Second, that the defendant used a firearm to aid in the commission of the bank robbery;

And third, that he did so unlawfully, wilfully and knowingly, as I have just instructed you.

In order to find Mr. Ford guilty of count 4, you must find, as I have said, that he committed the crime charged in count 3. And in addition, you must find beyond a reasonable doubt that he did unlawfully, wilfully and knowingly, as opposed to inadvertently, use a firearm.

Now, the term "firearm" as set forth in the indictment and the statute includes hand guns and shotguns. They cannot simply be toys. To justify a finding that a defendant used a firearm during the commission of a bank robbery it is not necessary to find that a defendant

1 dhh2

2 actually shot a customer and employee of the bank. Indeed,  
3 the government does not so contend. Rather, to satisfy  
4 this element of the offense, it is sufficient if you are  
5 convinced beyond a reasonable doubt that the defendant  
6 or others who you find participated with him carried one  
7 or more firearms which were worn, displayed and loaded  
8 during the commission of a robbery. It is is not essential  
9 to such a finding that there be direct evidence that shows  
10 that this firearm was in fact loaded. If a person is  
11 engaged in a robbery and displays or points a gun to insure  
12 his demand and intends to produce a fear in a person or  
13 persons, the jury is permitted to infer, if it wishes  
14 from such facts, that the gun was in fact loaded.

15 Now, if you find that the government has failed  
16 to establish beyond a reasonable doubt any one of the three  
17 elements of the firearms charge, as I have just enumerated  
18 and discussed them for you, then you must find the defendant  
19 not guilty of that charge.

20 On the other hand, if you should find that the  
21 government has sustained its burden of proving each and  
22 every one of these three elements of the firearms charge,  
23 then you may convict the defendant on that count.

24 As I have just described, in counts 3 and 4,  
25 the bank robbery charge and the firearms charge, the defendant

1 dhh3

2 has been charged with violating Title 18, United States  
3 Code, Sections 2113(a). (no plural) However, under  
4 both of these charges in the indictment, the defendant  
5 is also charged with violating another federal statute,  
6 and that is Title 18, United States Code, Section 2. And  
7 that statute provides in pertinent part as follows:

8 "Whoever commits an offense against the United  
9 States, or aids, abets, counsels, commands, induces or  
10 procures its commission, is punishable as a principal.

11 "Whoever wilfully causes an act to be done which  
12 if directly performed by him or another would be an offense  
13 against the United States, is punishable as a principal."

14 Accordingly, you may find the defendant guilty of  
15 the bank robbery charge or the firearms charge or both if you  
16 find beyond a reasonable doubt that another person actually  
17 committed the offense and the defendant aided and abetted  
18 him, or that the defendant caused the crime to be committed  
19 by an innocent agent.

20 Now, there is no precise rule as to what acts  
21 a defendant must perform in order to constitute the defendant  
22 an aider or an abettor. However, it is enough if you find  
23 that a defendant knowingly associated himself in some manner  
24 with the illegal venture, actually participated in it as  
25 something he wished to bring about, or that he sought by his

dhh4

actions to make it succeed.

In this connection, you may also consider whether the defendant had a stake in the venture. In other words, the law is that one who aids and abets another or causes another to commit an offense with knowledge of the unlawful nature of the offense is just as guilty of that offense as if he committed the offense himself.

To find a defendant guilty of aiding and abetting, you must, of course, find something more than mere knowledge on his part that a crime has been committed or is being committed. Thus, a mere spectator at a crime is not a participant or an aider or an abettor.

Consequently, in order to find a defendant guilty as an aider and abettor, you must find that this defendant, with knowledge of the unlawful purpose, in some way associated himself with the illegal activity, that he knowingly participated in it as something he wished to bring about, that he knowingly by his actions endeavored to make it succeed.

Now we shall turn to count 2 of the indictment, and in that count the defendant is charged with having violated Title 18, United States Code, Section 2312, which provides in pertinent part as follows:

"Whoever transports in interstate commerce a motor vehicle knowing the same to have been stolen," is

guilty of a crime.

And count 2 of the indictment reads as follows:

"On or about the 18th day of October, 1971, in the Southern District of New York, and elsewhere, James Patrick Flynn and Richard Thomson Ford, the defendants, unlawfully, wilfully and knowingly did transport in interstate commerce from Boston, Massachusetts, to Middletown, New York, a motor vehicle, to wit, a blue 1971 Plymouth Fury 3 bearing Massachusetts registration 43965F, knowing this motor vehicle to have been stolen."

In order to find the defendant guilty on count 2, you must find beyond a reasonable doubt that the government has established each of the following three elements:

First, that a blue 1971 Plymouth Fury 3, bearing Massachusetts registration 43965F had been stolen, not necessarily by the defendant or a defendant;

Second, that on or about October 18, 1971, the defendant unlawfully, wilfully and knowingly transported this motor vehicle in interstate commerce, that is, from Massachusetts to New York; and

Third, that the defendant knew this motor vehicle to have been stolen.

I instruct you that as a matter of law the word "stolen," as used in this indictment and in the statute

1 dhh6

2 includes all felonious takings of an automobile with intent  
3 to deprive the owner of the rights and benefits of ownership.  
4 Moreover, the word "stolen," is not restricted to an  
5 intent to permanently deprive the owner of his vehicle.  
6 If the original taking is done with intent to deprive  
7 the owner only temporarily of his rights and benefits of owner-  
8 ship, it, would still constitute a stealing.

9 Let me also explain what the government does not  
10 have to prove in connection with this count. It is not  
11 necessary that you, as jurors, know or are able to determine  
12 who it may have been who actually stole the blue Plymouth  
13 Fury from the Logan Airport in Boston, as the government  
14 contends it was stolen. Indeed, the government does not  
15 claim to have proved who specifically stole the car.

16 In other words, while the government must prove,  
17 and you must find, beyond a reasonable doubt that the car  
18 was stolen, and that Ford knew it was stolen, the government  
19 does not have to prove, and you don't have to find proof  
20 of, who stole it, or that Ford knew who stole it.

21 The law is that possession of property which  
22 has recently been stolen, if not satisfactorily explained,  
23 is a circumstance from which the jury may reasonably draw  
24 the inference that the person in possession of that recently  
25 stolen property knew that the property had been stolen.

dhh7

Indeed, possession of property recently stolen, not satisfactorily explained, is also a circumstance from which the jury may reasonably draw the inference and find, in the light of surrounding circumstances, that the person in possession participated in some way in the theft of the property, although the theft is not the crime you are concerned with.

The term "recently," of course, is a relative term which has no fixed meaning; whether the property may be considered as recently stolen depends upon the nature of the property and all the facts and circumstances shown by the evidence.

The longer the period of time since the theft, the weaker the inference which may be drawn from unexplained possession.

Here, for example, the government claims that the evidence establishes that the blue Plymouth was stolen from Logan Airport some time on October 18, 1971; was in the possession of the defendant or one of his accomplices on the evening of October 18, 1971, at the Holiday Inn in Middletown, New York, and was used by the bank robbers during the course of the escape from the area on October 20, 1971.

If you find from the evidence beyond a reasonable

1 dhh8

2 doubt that the blue Plymouth Fury described in the  
3 indictment was stolen, and that while recently stolen the  
4 motor vehicle was in the possession of the defendant,  
5 you would be justified in drawing from those facts the  
6 inference that the defendant had knowledge that it was  
7 stolen, unless possession of recently stolen property  
8 by the defendant is explained to the satisfaction of the  
9 jury by other facts and circumstances in evidence.

10 In considering whether possession of recently stolen  
11 property has been satisfactorily explained, the jury will  
12 bear in mind that in the exercise of constitutional rights  
13 the defendant need not take the witness stand and testify.  
14 Possession may be satisfactorily explained through other  
15 circumstances or other evidence independent of any testimony  
16 of the accused.

17 It is in the exclusive province of the jury  
18 to determine whether the facts and circumstances shown by  
19 the evidence warrants the inference which the law permits  
20 the jury to draw from possession of recently stolen property.

21 Now, as I indicated previously, an essential  
22 element of this count is that the motor vehicle had been  
23 transported by the defendant in interstate commerce. The  
24 government does not contend, however, that this defendant  
25 himself personally transported the stolen automobile from

dhh 9

Massachusetts to New York. Instead, it relies on two separate legal theories which I shall explain to you.

One of these theories we have already discussed. I have previously instructed you as to the federal statute which makes a person who aids, abets, counsels, commands, induces or procures the commission of a crime equally as responsible as a person who directly performs the acts constituting the crime. Thus, for example, if you find that someone other than Ford actually transported the stolen blue Plymouth Fury into New York, and if you also find beyond a reasonable doubt that Ford was an aider and abettor within the meaning of the aiding and abetting statute, as I have just explained it to you, you may find him guilty of this count.

Now, the second theory on which the government relies is one which is related to the conspiracy charge about which I will tell you in a few moments, and which is charged in count 1 of this indictment.

The government contends that in furtherance of the overall conspiracy to rob the bank the conspirators transported the stolen blue Plymouth in interstate commerce so that the car would be available to assist in the getaway.

I instruct you as a matter of law that each member of a conspiracy, as I shall define that term in a few moments,

1        dhh 10

2        is responsible for the acts of every other member of the  
3        conspiracy , which are done in furtherance of the objectives  
4        of the conspiracy and during the continuance of the con-  
5        spiracy.

6                Hence you may find the defendant guilty of the  
7        automobile count under this theory if you find beyond a  
8        reasonable doubt that a conspiracy to rob the bank existed  
9        and that the defendant was a member of that conspiracy,  
10       and further that the stolen Plymouth Fury was transported  
11       in interstate commerce by any co-conspirator in furtherance  
12       of the overall conspiracy.

13               Now, if you find that the government has failed  
14       to establish any one of the three elements of the stolen  
15       car charge, as I have just enumerated and discussed them  
16       for you, then you must find the defendant not guilty of  
17       that charge.

18               On the other hand, if you should find that the  
19       government has sustained its burden of proving each and  
20       every one of these three elements of the stolen car charge  
21       as to this defendant beyond a reasonable doubt, then you  
22       may convict the defendant on that count.

23               At this time we will take a ten-minute recess,  
24       after which I will discuss count 1, which is the only  
25       remaining charge which I have not yet covered.

The jury is excused now for ten minutes.

(Recess.)

(Jury present.)

THE COURT: As I indicated, we will turn our attention to count 1 of the indictment, which charges a violation of the federal conspiracy statute, which is Title 18, United States Code, Section 371.

That statute provides in pertinent part as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States or any agency thereof in any manner or for any purpose, and one or more such persons do any act to effect the object of the conspiracy, each is guilty of a crime."

Count 1 of the indictment reads as follows:

In or about October, 1971, in the Southern District of New York and elsewhere, James Patrick Flynn and Richard Thomson Ford, who was also known as Vincent A. Thomas and John A. August, the defendants, unlawfully, wilfully and knowingly, did conspire and agree with each other and with other persons to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 2382, 2383(a) and 924(c)(1).

"It was part of this conspiracy that James Patrick

1 dhh 12

2 Flynn and Richard Thomson Ford, the defendants, would  
3 unlawfully, wilfully and knowingly transport in interstate  
4 commerce from Boston, Massachusetts, to Middletown,  
5 New York, a motor vehicle, to wit, a blue 1971 Plymouth  
6 Fury III, bearing Massachusetts registration 43965F, knowing  
7 this motor vehicle to have been stolen.

8 "It was further part of this conspiracy that  
9 James Patrick Flynn and Richard Thomson Ford, defendants,  
10 unlawfully, wilfully and knowingly, by force and violence  
11 and by intimidation, would take from the person and presence  
12 of another money in the approximate amount of \$203,938 be-  
13 longing to and in the care, custody, control, management  
14 and possession of the Orange County Trust Company, Route  
15 211, Middletown, New York, a bank the deposits of which were  
16 then insured by the Federal Deposit Insurance Corporation.

17 "It was further part of this conspiracy that  
18 James Patrick Flynn and Richard Thomson Ford, defendants,  
19 unlawfully, wilfully and knowingly would use firearms,  
20 to wit, a shotgun and two hand guns to commit a felony  
21 for which they may be prosecuted in a court of the United  
22 States, namely, the felony set forth in count 3 of this  
23 indictment.

24 "Overt acts.

25 "In furtherance of this conspiracy and to effect

dhh13

its objects, the following overt acts among others were committed by the defendants in the Southern District of New York:

1. On or about October 17, 1971, the defendant, Richard Thomson Ford, who was also known as Vincent A. Thomas and John A. August, resided at the Sugar's Bungalows, Jersey Avenue, Greenwood Lake, New York, under the assumed name of Vince : A. Thomas.

2. On or about October 18, 1971, the defendant, James Patrick Flynn, resided in room 123 of the Holiday Inn, Middletown, New York, a room then registered under the fictitious name of Robert P. Barry of Lynn, Massachusetts.

3. On or about October 20, 1971, James Patrick Flynn, Richard Thomson Ford, the defendants, entered the Orange County Trust Company, Route 211, Middletown, New York, wearing masks and gloves and carrying firearms.

4. On or about October 20, 1971, James Patrick Flynn and Richard Thomson Ford, the defendants, exited from a beige 1972 Plymouth Fury III with a tan vinyl top and entered a blue 1971 Plymouth Fury III in the Middletown Senior High School parking lot."

Now, what is a conspiracy? A conspiracy is a collective criminal agreement, a partnership in crime. A conspiracy presents a greater potential threat to government

1 dhh:l4

2 and society than acts committed by a lone wrongdoer. That  
3 is why the Congress has made conspiracy to violate a  
4 federal statute a separate and distinct crime.

5 Concerted action for criminal purposes often,  
6 if not normally, makes possible the attainment of ends  
7 more complex than those which an individual acting alone  
8 could accomplish.

9 Moreover, group association increases the  
10 likelihood that the criminal objective will be successfully  
11 realized and renders detection more difficult than in the  
12 instance of the lone wrongdoer.

13 Now, in order to prove the crime of conspiracy  
14 which is alleged here, the government must establish to  
15 your satisfaction beyond a reasonable doubt each of the  
16 following essential elements of the crime of conspiracy

17 First, the existence of the conspiracy as alleged  
18 in the indictment;

19 Second, that it was a purpose of the conspiracy,  
20 as alleged in the indictment, to violate the bank robbery  
21 statute, the firearms statute and the stolen car and  
22 interstate commerce statute;

23 Third, that the defendant knowingly and wilfully  
24 became a participant in or a member of the conspiracy;

25 Fourth, that at least one of the co-conspirators

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2 knowingly committed at least one of the overt acts set  
3 forth in the indictment in furtherance of the conspiracy  
4 and during the period of the conspiracy alleged in the  
5 indictment.

6 Now, I am going to discuss each one of these  
7 four elements in greater detail; and the first is the  
8 existence of a conspiracy as alleged in the indictment.

9 In order to establish or prove a conspiracy,  
10 the government is not required to show that two or more  
11 persons sat around a table and entered into a solemn contract,  
12 orally or in writing, stating that they have formed a  
13 conspiracy to violate the law, set forth the details of the  
14 plan, the means by which the unlawful project is to be  
15 carried out or the part to be played by each co-conspirator.  
16 Indeed, it would be extraordinary if there were such a formal  
17 agreement or specific oral statement. Your common sense  
18 will tell you that when men in fact undertake to enter into  
19 a criminal conspiracy much is left to unexpressed under-  
20 standing.

21 Conspirators do not usually reduce their agreements  
22 to writing or acknowledge them before a notary public,  
23 nor do they publicly broadcast their plans.

24 From its very nature, a conspiracy is almost  
25 invariably secret in its origin and execution. Therefore,

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2 it is sufficient if you find that two or more persons  
3 in any manner, through any contrivance, impliedly or  
4 tacitly, come to a common understanding to violate the law.  
5 Express language or specific words are not required to  
6 indicate assent or attachment to a conspiracy, nor is  
7 it required to find that all the co-conspirators alleged  
8 in the indictment joined in the conspiracy in order to  
9 find that a conspiracy existed.

10 You need only find that one alleged co-conspirator  
11 or the defendant and one other entered into an unlawful  
12 agreement with one or more persons in order to find that  
13 a conspiracy existed.

14 In determining whether there has been an unlawful  
15 agreement, you may judge acts and conduct of the alleged  
16 co-conspirators which are done to carry out an apparent  
17 purpose. The adage, "Actions speak louder  
18 than words," is applicable here. Usually the only evidence  
19 available of a conspiracy is that of disconnected acts,  
20 which, however, when taken together in connection with  
21 each other show a conspiracy to secure a particular result  
22 as satisfactorily and conclusively as more direct proof.

23 Proof concerning the accomplishment of the object  
24 of a conspiracy makes the most persuasive evidence  
25 of the existence of the conspiracy itself; success of the

dhh17

venture, if you believe it was successful, may be the best proof that there existed an agreement to violate the law.

In this connection it is not necessary for the government to prove the success of the venture in order to establish a violation of the conspiracy statute. A conspiracy is basically an agreement to violate the law, it may exist even though final objectives are never realized or accomplished.

In determining whether the conspiracy charged in this indictment actually existed, you may consider the evidence, the acts and the conduct of the alleged co-conspirators as a whole, and the reasonable inferences to be drawn from such evidence.

If upon such consideration of the evidence you find beyond a reasonable doubt that the minds of at least two of the alleged co-conspirators met in an understanding way, and that they agreed as I have explained a conspiratorial agreement to you to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of a conspiracy, but only of its existence, is complete.

While the indictment charges that the conspiracy began in or about October, 1971, it is not essential that the

1 dhh18

2 government prove the conspiracy started and ended  
3 on or about that particular date, that is, October, 1971.

4 It is sufficient if you find that in fact a conspiracy  
5 was formed and existed for some substantial period of time  
6 within that period, that is, in or about October, 1971.

7 And if you find that at least one of the overt acts alleged  
8 in the indictment was committed in furtherance of the  
9 conspiracy during that period. And as to an overt act which  
10 you find did occur, you need not find that it occurred  
11 on a specific date set forth in the indictment. You need  
12 only find that it occurred no earlier than on or about  
13 October, 1971, and no later than October, 1971.

14 Now we come to the second element of the crime.  
15 The indictment charges that the conspiracy had three ob-  
16 jectives, that is, to violate the federal bank robbers  
17 statute, the stolen car and interstate commerce statute,  
18 and the firearms to commit a felony statute. Now, with respect  
19 therefore to this second element the government must prove  
20 to your satisfaction beyond a reasonable doubt that it  
21 was the purpose of this conspiracy to violate at least  
22 one of these laws.

23 At the trial, the government has contended that  
24 the real overall objective was to rob a bank. If you find  
25 beyond a reasonable doubt from all the evidence that the

conspirators agreed upon this one criminal objective, that is, to rob a bank, that would be sufficient to satisfy this second element.

Now we come to the third element of the crime of conspiracy. The third element which you must find is that this defendant knowingly and wilfully became a member of the conspiracy. Therefore, if you conclude that a conspiracy as charged in the indictment did exist, and that its purpose was to violate the federal statutes which I have mentioned, the bank robbery statute, the stolen car statute and the firearms statute, you must next determine whether the defendant on trial was a member of that conspiracy, that is, whether he participated in the conspiracy with knowledge of its unlawful purposes, and in furtherance of its unlawful objectives.

A defendant's participation in the conspiracy, like its existence, can be inferred from such facts and circumstances in evidence as would logically sustain that inference. I want to caution you, however, that mere association of a defendant with an alleged conspirator or conspirators does not establish his participation in a conspiracy if you find that one did exist.

So, too, the mere knowledge by defendant of the existence of a conspiracy or any illegal act on the part of

1 dhh20

2 an alleged co-conspirator is not sufficient evidence  
3 to establish his membership in the conspiracy. You must  
4 find, as I have said, actual knowing participation by this  
5 defendant in the agreement to violate the law.

6 Now, again, an act is done knowingly if it is  
7 done voluntarily and purposefully and not because of  
8 mistake, accident, mere negligence or other innocent reason.  
9 An act is done wilfully if it is done knowingly, deliberately  
10 and with an evil motive or purpose.

11 Again, in determining whether a defendant has  
12 acted wilfully, it is not necessary for the government  
13 to establish the defendant knew that he was breaking  
14 any particular law or any particular rule. It must, however,  
15 prove that the defendant had an evil motive or purpose  
16 in mind.

17 Now, the law is that even if one conspirator  
18 joined the conspiracy after it was formed and was engaged  
19 in it to a degree more limited than that of other co-  
20 conspirators, he is equally culpable so long as he was  
21 a co-conspirator. In other words, it is not required  
22 that a person be a member of the conspiracy from its very  
23 start. He may join it at any point during its progress  
24 and be held responsible for all that has been said or  
25 done in furtherance of the conspiracy before he joined and

1 dhh21

2 that may be done or said thereafter, during the existence  
3 of the conspiracy and in furtherance of the conspiracy and  
4 while he remains a member.

5 Simply stated, and using the partnership  
6 analogy, of becoming a partner, one who joins a  
7 conspiracy assumes all the liabilities of the partnership  
8 including those which have occurred before he became  
9 a member.

10 It is not required that the government prove  
11 that a conspirator knew all the other members of the con-  
12 spiracy. A conspiracy once formed is presumed to have  
13 continued until its objective was accomplished or there is  
14 some affirmative act of termination by its members.

15 Once you are satisfied beyond a reasonable doubt  
16 that a conspiracy existed and that the defendant was a  
17 member of it, any acts and declarations of any person whom  
18 you find was also a member of the conspiracy made during  
19 its pendency or done during its pendency and in furtherance  
20 of its objectives, are considered the acts and declarations  
21 of all other members, even though the particular defendant  
22 was not present at the time the act was committed or the  
23 statement made as long as such act was done in furtherance  
24 of the conspiracy.

25 In other words, every co-conspirator is fully

1 dhh21a

2 responsible for what every other co-conspirator does in  
3 furtherance of the conspiracy, whether he knows about it  
4 or not and whether he specifically approves of it or not.  
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Now we come to the fourth and final element of the crime of conspiracy. The offense of conspiracy is complete only when the unlawful agreement is made and any single overt act to effect the object of the conspiracy is therefore committed by at least one of the co-conspirators.

Now, an overt act is any step, action or conduct which is taken to achieve, accomplish or further the objective of the conspiracy. The purpose of requiring proof of an overt act is that while the parties might conspire and agree to do an unlawful thing, they may change their minds or even abandon the project and do nothing to carry it into effect, in which event it won't be a crime.

The prosecution is not required to set forth in the indictment each and every act on which it relies to establish the conspiracy or a defendant's participation therein, nor is it required to prove each overt act which may have occurred during and in furtherance of the conspiracy, but it is required to prove that at least one overt act did take place here in the Southern District of New York.

The overt act need not be criminal in itself. It may, for instance, as alleged in this case, consist of mere residence in the Southern District of New York

for the purposes of conspiracy, or in connection with its objectives mere meetings between alleged co-conspirators.

The overt act, however, as I have said, must be an act which follows and tends toward the accomplishment of a plan or scheme charged in the conspiracy count, and must be knowingly done in furtherance of some objective of the conspiracy.

If you find that the government has failed to establish beyond a reasonable doubt any one of the four elements of the crime of conspiracy, as I have just enumerated and discussed them for you, then you must find the defendant not guilty of that charge.

On the other hand, if you should find that the government has sustained its burden of proof with respect to each one of these elements of the crime of conspiracy, then you may find the defendant guilty on that count.

Now, before finally instructing you concerning your duties as jurors, I want to instruct you with regard to three other points of evidence introduced by the government in this case.

First, the government has introduced evidence concerning the circumstances of the defendant's departure from Middletown late in the month of October, 1971, and his attempted escape from the FBI agents in Chicago in

1973.

Now, the law is that the flight or concealment of a person immediately after the commission of a crime, or after he is accused of a crime which has been committed, is not sufficient in itself to establish guilt, but it is a fact which, if proved beyond a reasonable doubt, may be considered by the jury in the light of all other proven facts in deciding the question of guilt or innocence.

Whether or not evidence of flight or concealment shows a consciousness of guilt and the significance, if any to be attached to such a circumstance are matters for determination by the jury.

If you find beyond a reasonable doubt that the defendant used a name other than his own in order to avoid subsequent identification, that would be a fact from which you may, but need not, infer a consciousness of guilt on his part.

If you find beyond a reasonable doubt that the defendant in the face of a court order on penalty of contempt refused to permit samples of his hair to be removed so that such samples might be compared with hairs found in one of the getaway cars, this is also a fact from which you may, but need not, infer a consciousness of guilt on his part.

1                   dhr  
2                   Now, ladies and gentlemen, the most  
3                   important part of this case is the part which you now, as  
4                   jurors, are about to play, because it is for you, and you  
5                   alone, to decide whether a defendant is guilty or not  
6                   guilty as to a particular count in the indictment. I  
7                   know that you will try the issues that have been presented to  
8                   you according to the oath which you have taken as jurors,  
9                   and in that oath you promised that you would well and  
10                  truly try the issues joined in this case and a true verdict  
11                  render.

12                  Now, I suggest to you that if you follow that  
13                  oath and try the issues without combining your thinking  
14                  with any emotions, you will arrive at a true and just  
15                  verdict.

16                  Now, it must be clear to you that once you  
17                  get into an emotional state and let fear or prejudice  
18                  or bias or sympathy interfere with your thinking, then you  
19                  will not arrive at a true and just verdict.

20                  Now, as you deliberate, please be careful  
21                  to listen to the opinions of your fellow jurors as well  
22                  as to ask for an opportunity to state your own views.  
23                  No one juror holds the center stage in the jury room,  
24                  and no one juror controls or monopolizes the deliberations.

25                  If, after listening to your fellow jurors,

1  
2 and if, after stating your own view, you become convinced  
3 that your view is wrong, don't hesitate because of  
4 stubbornness or pride of opinion to change your view.

5  
6 On the other hand, don't surrender your honest  
7 conviction solely because of the opinion of your fellow  
8 jurors or because you are outnumbered.

9  
10 Under your oath as jurors, you are not to be  
11 swayed by sympathy. You are to be guided solely by the  
12 evidence in the case, and the hard core question which  
13 you must ask yourselves as you sit through this evidence  
14 is, where do you find the truth? Now, this is a question  
15 of the truth. That is what a trial is. It is not a  
16 battle of wits, it is not a contest of salesmanship,  
17 and is not a contest in personality. The only triumph  
18 in any case, whether it be a civil case or a criminal case,  
19 is whether or not the truth has triumphed. If it has,  
20 then justice has been done. If it has not, justice will  
21 not have been done.

22  
23 You are to determine the guilt or innocence  
24 of this defendant, again, solely on the basis of the  
25 evidence and the law which I just instructed you upon.

The jury is not to consider in its deliberations  
or in any way to speculate about the punishment which a  
defendant may receive if he is found guilty. The function

1  
2 of a jury is to determine the guilt or innocence of a defen-  
3 dant on the basis of the evidence and the Court's instruc-  
4 tions as to the law. It is then the Court or the  
5 Judge alone who has the duty to determine the sentence if  
6 there is a conviction.

7 Again, you must return a verdict as to each  
8 count separately, and there are four counts in the  
9 indictment. The form of your verdict is either guilty  
10 or not guilty. You may return a verdict of guilty as  
11 to each count, you may return a verdict of not guilty  
12 as to each count, you may return a verdict of guilty  
13 as to some counts, and a verdict of not guilty as to  
14 others.

15 If you are not able to agree on a verdict as  
16 to several counts, you may not compromise by finding a  
17 defendant guilty as to certain counts and not guilty  
18 as to others. But, as I have pointed out to you earlier,  
19 in order to find the defendant guilty of a firearms  
20 charge, you must find him guilty of the bank robbery  
21 charge.

22 Now, your verdict as to each count must be  
23 unanimous and must reflect the conscientious conviction  
24 of each and every one of you as to each count.

25 When you retire to the jury room, you may send

for any of the exhibits you desire to see or have any of the testimony read back.

Now, you are instructed that you are not to reveal the standing of the jurors, that is, the split of the vote, if that should occur, to anyone including the Court at any time during your deliberations. If you have any questions you would like to ask the Court, you will be furnished with pieces of paper and envelopes so you can write out a note and send it out.

Now, will the lawyers please approach the robing room.

(In the robing room)

THE COURT: Mr. Buchwald, do you have any exceptions to the charge?

MR. BUCHWALD: No exceptions, your Honor.

THE COURT: Mr. Chisolm?

MR. CHISOLM: Yes, your Honor, to that portion of the Court's charge wherein you instructed the jury as follows: If you find beyond a reasonable doubt that the defendant in the face of a court order on penalty of contempt refused to permit samples of his hair to be removed so that such samples of his hair might be compared with hairs found in one of the getaway cars, this is a fact from which you

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dhr

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2

may but need not infer a consciousness of guilt on his

3

part.

4

THE COURT: Any other?

5

MR. CHISOLM: I have no other exceptions

6

to that portion of the Court's charge. I just point

7

out on that particular one there was no evidence that

8

if Ford refused to furnish the hair samples that it

9

could be used at his trial and there's no evidence

10

that the hair samples sought from him were for the

11

purpose of comparing them with hairs found in one of the

12

getaway cars.

13

THE COURT: All right.

14

(In open court)

15

THE COURT: Ladies and gentlemen, at this

16

time the Court will excuse alternate juror No. 1, Mr.

17

Curley Saunders. Mr. Saunders, on behalf of the citizens

18

in the Southern District of New York, this Court thanks

19

you for your service on this jury. I am sorry that you

20

will not get an opportunity to deliberate with your fellow

21

jurors after having sat through this trial, but I'm afraid

22

that that is often the fate of alternate jurors.

23

But I'm sure you realize, also, that your

24

service was essential in the event that one of the other

25

regular jurors became incapacitated or couldn't serve

1 dhr

895

2 as occurred in this case, with one juror being excused  
3 and the original alternate juror No. 1 being substituted.

4 So you are excused now with the thanks of the  
5 Court.

6 Do you have anything in the jury room?

7 ALTERNATE JUROR NO. 1: Yes, I have a news-  
8 paper.

9 THE COURT: Would you get it and leave before  
10 the others have come in.

11 ALTERNATE JUROR NO. 1: Yes, I would.

12 THE COURT: You are finished with the jury  
13 service and you can take your card for that purpose to  
14 room 109.

15 (Alternate Juror No. 1 excused)

16 THE COURT: At this time I will ask the clerk  
17 to swear the marshals who will accompany the jurors to the  
18 jury room.

19 (One marshal was duly sworn)

20 THE COURT: The jurors may follow the  
21 marshal to the jury room.

22 (At 4:05 p.m. the jury retired to deliberate)

MEMO ENDORSE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
UNITED STATES OF AMERICA

v.

JAMES PATRICK FLYNN and  
RICHARD THOMSON FORD, a/k/a  
"Vincent A. Thomas", a/k/a  
"John A. August",

Defendants.

:  
: NOTICE OF MOTION

: S. 74 Cr. 336 CBM  
:

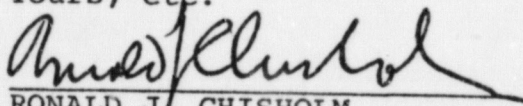
-----x  
SIRS:

PLEASE TAKE NOTICE that, at a time and place convenient to the Court, the defendant will move this Court for an order dismissing the indictment as to the defendant Richard T. Ford for the reasons that he has been denied his rights to a speedy trial as guaranteed to him by the Federal Constitution and the Rules of the Southern District of New York.

This motion is based on this notice, the annexed affidavit of Ronald J. Chisholm and all the papers and proceedings heretofore in this case.

DATED: Boston, Massachusetts  
November 4, 1974.

Yours, etc.

  
RONALD J. CHISHOLM  
Attorney for Richard T. Ford

ED

TO: STEVEN A. SCHATTEN, ESQUIRE  
Assistant United States Attorney  
Southern District of New York

D

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :

v. : AFFIDAVIT

JAMES PATRICK FLYNN and  
RICHARD THOMSON FORD, a/k/a :  
"Vincent A. Thomas", a/k/a : S. 74 Cr. 336 (CBM)  
"John A. August",

Defendants. :

- - - - - x

STATE OF MASSACHUSETTS:

SS.

COUNTY OF SUFFOLK:

RONALD J. CHISHOLM, being duly sworn, deposes  
and says:

1. I am attorney for defendant Richard T.  
Ford in the above case. I make this affidavit in  
support of the defendant Ford's Motion for Dismissal.

2. The defendant Ford was arrested on or  
about October 11, 1973 in Chicago on a warrant charg-  
ing Ford with robbery, the subject matter of this in-  
dictment on a complaint that was issued November 11,  
1971.

3. When Ford was arrested by federal  
authorities he was not brought to this jurisdiction  
to answer to this charge but instead was turned over  
to Massachusetts authorities to answer to other  
charges pending in the Commonwealth of Massachusetts.

4. A few days after being arrested in Chicago defendant Ford wrote a letter dated September 28, 1973 (undoubtedly meant to be October 28, 1973) to the U.S. Chief Justice for the Southern District of New York insisting upon a speedy trial. A copy is attached hereto marked Exhibit A. Defendant Ford also wrote an identical letter to the United States Attorney for the Southern District of New York insisting on a speedy trial. A copy is attached hereto marked Exhibit B.

5. In March, 1974 Ford was indicted by the Grand Jury of the Southern District of New York for this offense.

6. On April 1, 1974 Ford was brought before this Court for arraignment but the arraignment was continued until April 8, 1974 to allow Ford the opportunity to obtain counsel.

7. On April 1, 1974 the government filed an affidavit of readiness.

8. On April 3, 1974 Ford's arraignment was continued until April 15, 1974. On April 3, 1974 the Grand Jury voted a superseding indictment charging Ford and others with the same robbery.

9. On April 15, 1974 Ford was arraigned on this indictment and pleaded not guilty.

10. On April 25, 1974 pretrial motions were heard. On April 25, 1974 the Court set May 23, 1974 for trial of this indictment (co-defendant Flynn was defaulted on April 15, 1974).

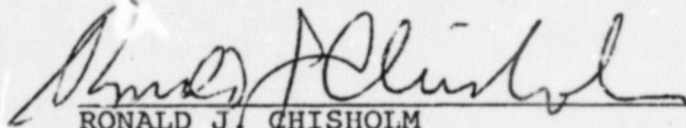
11. On May 22, 1974 Judge Bauman granted the government's motion for a continuance of ninety days or until the apprehension of co-defendant Flynn, whichever occurred first. This motion was granted over the defendant's objection and the case was set for trial for August 21, 1974.

12. Approximately August 16, 1974 I received notice that the defendant Ford's trial had been continued until November 18, 1974. This continuance was without the defendant Ford's assent and over his objection.

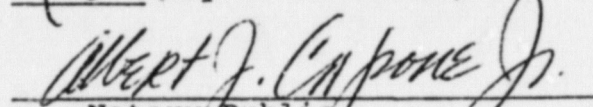
13. The government admittedly has exculpatory evidence which it refuses to disclose until after the trial has commenced. This exculpatory evidence is not documentary but identification evidence previously brought to the Court's attention on other motions. This evidence may not be available at a later time or if it is the quality may be weakened through the lapse of time.

14. The defendant Ford is being denied furlough privileges afforded to him by the Commonwealth of Massachusetts while serving a sentence in Massachusetts while a detainer on this charge is lodged against him.

WHEREFORE, the defendant Ford respectfully requests that this Court idsmis the indictment as to him.

  
RONALD J. CHISHOLM  
Attorney for defendant Ford

Sworn to before me this  
4<sup>th</sup> day of November, 1974.

  
Notary Public

My commission expires:

April 29, 1977

9-28-73

MR. Richard Ford  
Registered #7306192  
Tier H-2 Cell  
2600 California Ave.  
Chicago, Ill.

U.S. Chief Justice for Southern District of New York  
United States Court House  
Foley Square  
New York City, New York

Dear Sir:

I am taking this opportunity to advise you that I, Richard Ford, am presently in the custody of the Cook County Sheriff, State of Illinois, awaiting extradition to the State of Massachusetts, Essex County House of Correction to stand trial for escape.

This is to further advise you that the Federal authorities in and for the People of the United States of America, Southern District of New York have placed a Federal Detainer Against me for Bank Robbery. (information # U.S.C. 2113-Hand 2)  
Therefore, I, Richard Ford, ask this Honorable Court to move in the following matter:

(1) That you make a Certified Copy of this Statement whereby proving that I, Richard Ford, have notified this Honorable Court of my whereabouts, and file same on Court Record.

(2) That this Honorable Court take action upon this notification of my whereabouts, and bring petitioner Richard Ford to the State of New York to stand trial for and/or the charges in information # U.S.C. 2113-H and 2 be dropped.

All this enabling Richard Ford to be Guaranteed Equal protection under the law; to be tried or released from the charges set forth in information # U.S.C. 2113-H and 2 in the amount of time set forth

(Page two)  
U.S. Chief Justice for Southern District of New York  
United States Court House  
Foley Square  
New York City, New York

in the United States Constitution.

Petitioner, Richard Ford, retains the Right to  
A speedy trial, as well as his plea of not guilty.

Richard Ford further states that this is not a  
petition - but a letter asking for my Constitutional Rights  
to A speedy trial.

Sincerely

Richard Ford

R.F. Enclosures: one

9-28-73

Mr. Richard Ford  
Registered # 7308694  
Tier H-2 Cell  
2600 California Ave.  
Chicago, Illinois 60608

U.S. Attorney for Southern District of New York  
United States Court House  
Foley Square  
New York City, New York

Dear Sir:

I am taking this opportunity to advise a duly authorized representative for the People of the United States of America, that I, Richard Ford, am presently in the custody of the Cook County Sheriff, State of Illinois; awaiting extradition to the State of Massachusetts, Essex County House of Correction to stand trial for escape.

This is to further advise you that the Federal authorities in and for the People of the United States, Southern District of New York, have placed a Federal Detainer Against me for Bank Robbery. (Information # U.S.C. 2113-A-and 2)

Therefore, I petition you, a duly authorized Attorney for the people of the United States of America, Southern District of New York, as follows:

(1.) That you make Certified Copies of this Statement, whereby proving that I, Richard Ford, have notified the Court as to my whereabouts, and filing same on Court Record.

(2.) That you take action on this notification of my whereabouts and bring Petitioner, Richard Ford to the State of New York to stand trial for and/or the Charges alleged in information # U.S.C. 2113-A-And 2 Be dismissed.

(PAGE TWO)

U.S. Attorney for Southern District of New York  
United States Court House  
Foley Square  
New York City, New York

All this enabling petitioner, Richard Ford, to Be Guaranteed Equal protection under the law; to be tried or released from the Charges set forth in information # U.S.C. - A - AND 2 - in the Amount of time set forth in United States Constitution.

Petitioner, Richard Ford, Retains the Right to A speedy trial, AS WELL AS his plea of Not Guilty.

Petitioner further States he is not a well educated man. This is Not A Petition but A letter ASKING for my Constitutional Rights.

Sincerely  
Richard Ford

R.F. Enclosures: one

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

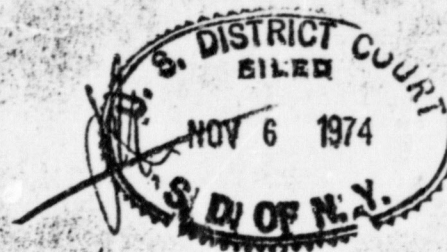
JAMES PATRICK FLYNN and  
RICHARD THOMSON FORD, a/k/a  
"Vincent A. Thomas", a/k/a  
"John A. August",

Defendants.

NOTICE OF MOTION AND  
AFFIDAVIT

S. 74 Cr. 336 (CBM)

RONALD J. CHISHOLM, ESQUIRE  
THREE CENTER PLAZA  
BOSTON, MASSACHUSETTS 02108  
(617)- 426-8688



*For the reasons set forth  
in the record this date,  
The within motion  
is denied.*

SO ORDERED

*Dated: N.Y., N.Y.  
11/4/74*

*Constance Baker Motley*  
U.S.D.J.

MICROFILM

NOV 4 1974

FILED IN COURT  
SEP 2-1975

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

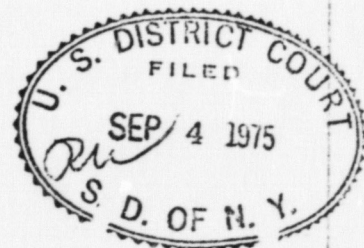
v. :

NOTICE OF MOTION

JAMES PATRICK FLYNN and :  
RICHARD THOMSON FORD, a/k/a :  
"Vincent A. Thomas", a/k/a :  
"John A. August.", :

S. 74 Cr. 336 CBM

Defendants. :  
-----X



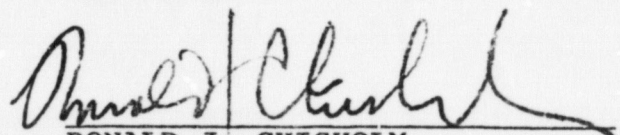
SIRS:

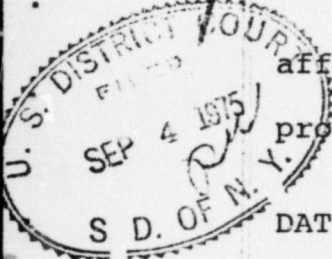
PLEASE TAKE NOTICE that, at a time and place convenient to the Court, the defendant will move this Court for an order dismissing the indictment as to the defendant Richard T. Ford for the reasons that he has been denied his rights to a speedy trial as guaranteed to him by the Federal Constitution and the Rules of the Southern District of New York.

This motion is based on this notice, the annexed affidavit of Ronald J. Chisholm and all the papers and proceedings heretofore in this case.

DATED: Boston, Massachusetts  
August 29, 1975

Yours, etc.

  
RONALD J. CHISHOLM  
Attorney for Richard T. Ford



MICROFILM

*preparing and  
the attached motion  
to dismiss for lack  
of speedy trial denied.  
N.Y.N.Y. S. ordered  
9/3/75 Constance B. ...  
U.S.D.N.Y.*

TO

TO: DON BUCHWALD, ESQUIRE  
Assistant United States Attorney  
Southern District of New York

E

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

v. :

JAMES PATRICK FLYNN and :  
RICHARD THOMSON FORD, a/k/a :  
"Vincent A. Thomas", a/k/a :  
"John A. August", :

Defendants. :

AFFIDAVIT

S. 74 Cr. 336 (CBM)

-----X  
STATE OF MASSACHUSETTS:

SS.

COUNTY OF SUFFOLK:

RONALD J. CHISHOLM, being duly sworn, deposes and  
and says:

1. I am attorney for the defendant Richard T. Ford  
in the above case. I make this affidavit in support of the  
defendant Ford's Motion for Dismissal.

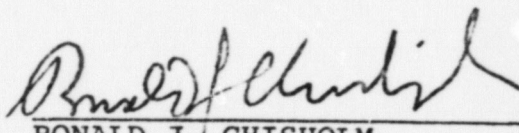
2. On November 4, 1974, the defendant's Motion  
to Dismiss the indictment for denial of speedy trial was  
denied by Judge Motley.

3. On November 4, 1974, Judge Motley set this  
case for trial for February 18, 1975.

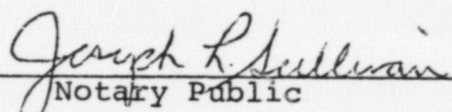
4. On February 18, 1975, Judge Motley set this  
case for trial for June 11, 1975. This continuance was  
over the defendant Ford's objection.

5. Prior to June 11, 1975, Assistant United States Attorney, Don Buchwald, advised me that the Court had continued this case to September 2, 1975, for trial. This was without the defendant Ford's consent and over his objection.

WHEREFORE, the defendant Ford respectfully requests that this Court dismiss the indictment as to him.

  
RONALD J. CHISHOLM  
Attorney for defendant Ford

Sworn to before me this  
29th day of August, 1975.

  
Notary Public

My commission expires: Feb. 19, 1979

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA :

-v- :

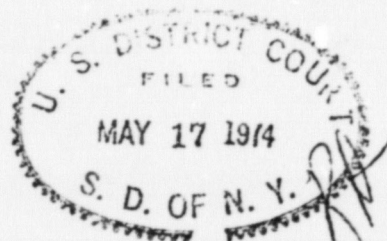
NOTICE OF MOTION

JAMES PATRICK FLYNN and :  
RICHARD THOMSON FORD, a/k/a :  
"Vincent A. Thomas", a/k/a :  
"John A. August", :

S. 74 Cr. ~~288~~ (AB)

336

Defendants. :



-----X  
SIRS:

PLEASE TAKE NOTICE that, at a time and place convenient to the Court, the Government will move this Court for an order adjourning the trial of the above-entitled case, presently scheduled for May 28, 1974, for a period of approximately 90 days or until the apprehension of the fugitive co-defendant Flynn, whichever period is shorter.

This motion is based on this notice, the annexed affidavit of Assistant United States Attorney Jed S. Rakoff for the Government, and all the papers and proceedings heretofore in this case.

Dated: New York, New York  
May 16, 1974.

Yours, etc.

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States of  
America

By: Jed S. Rakoff  
JED S. RAKOFF  
Assistant United States Attorney

JSR:ccc  
71-3397

To: RONALD J. CHISHOLM, ESQ.  
Three Center Plaza  
Boston, Massachusetts 02108  
(Attorney for defendant Ford)

ROBERT FLORSHEIM, ESQ.  
10 Columbus Circle  
New York, New York 10019  
(Local attorney of record for defendant Ford)

F

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA :

- v - :

JAMES PATRICK FLYNN and :

RICHARD THOMSON FORD, a/k/a :

"Vincent A. Thomas," a/k/a :

"John A. August," :

Defendants. :

- - - - -x

STATE OF NEW YORK )

COUNTY OF NEW YORK : ss.:

SOUTHERN DISTRICT OF NEW YORK )

AFFIDAVIT

S.74 Cr. 336 (AB)

JED S. RAKOFF, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney  
in the office of Paul J. Curran, United States Attorney for  
the Southern District of New York and have responsibility  
for the prosecution of the above-captioned case. I make  
this affidavit in support of the Government's motion for an  
adjournment of the trial of this case, presently scheduled  
(as to defendant Ford) for May 28, 1974, for a period of  
approximately 90 days or until the apprehension of the  
fugitive co-defendant Flynn, whichever period is shorter.

2. The Government respectfully submits that  
such an adjournment would fully comport with this District's  
Plan for Achieving Prompt Disposition of Criminal Cases  
(the "Speedy Trial Rules"), would be in the best interests  
of justice and judicial management, and would not prejudice  
defendant Ford in any material respect.

/.

I. LESS THAN TWO MONTHS OF  
THE SPEEDY TRIAL RULES'  
'SIX MONTH PERIOD' HAS RUN.

3. Ford escaped from a Massachusetts prison sometime prior to 1970 (I believe, 1968). A Massachusetts warrant charging him with escape and assault with intent to murder issued as a result. The Government expects to prove that in 1971, while living in Greenwood Lake, New York, under the alias "Vincent A. Thomas," he joined with co-defendant Flynn and others to commit the armed bank robbery and ancillary crimes charged in the instant indictment. At any rate, a federal warrant based on a complaint charging Ford with the bank robbery was issued in 1971. Ford, however, remained a fugitive until October 11, 1973, when he was captured in Chicago under the name "John A. August."

4. Upon his capture, Ford was turned over to Massachusetts authorities to stand trial on the prior state charges, and the federal warrant was lodged as a detainer. (About this same time, Ford wrote a letter to the Southern District of New York requesting a Speedy Trial on the federal charges.) On February 8, 1974, midway through his trial in Massachusetts, Ford changed his plea to one of guilty on charges of escape, assault with intent to murder, and related charges. He was sentenced forthwith to concurrent terms of 8 to 10 years imprisonment, which term he is presently serving. The judgments were entered that same date, February 8, 1974.

2.

5. Hence, February 8, 1974, is, at earliest, the date on which the "six-month period" under the Speedy Trial Rules began to run as to Ford.\* This is because the period prior to October 11, 1973, during which time he was a fugitive, is a period excluded from the six-month computation by virtue of Rule 5(d) of the Speedy Trial Rules, which treats as an excluded period "The period of delay resulting from the absence or unavailability of the defendant." Similarly, the period from October 11, 1973, until the disposition of the Massachusetts charges on February 8, 1974, is an excluded period by virtue of any of three separate provisions: Rule 5(d), supra; Rule 5(f), which excludes "The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial;"\*\* and, particularly, Rule 5(a), which excludes "The period of delay while proceedings concerning the defendant are pending, including but not limited to . . . trial of other charges, and the period during which such matters are sub judice." See, e.g., United States v. Cangiano, 491 F.2d 906, 909 (2d Cir. 1974).

6. On March 21, 1974, a two-count Indictment (74 Cr. 279), charging Ford with the 1971 armed bank robbery, was filed in this District. Ford was arraigned before Judge Tenney on April 1st at which time he refused to be

\* The shorter, "three-month period" for detained defendants does not apply to "any defendant who is serving a term of imprisonment for another offense . . . ." Rule 3 of the Speedy Trial Rules.

\*\*The "reasonable efforts" provision, in a context such as this, appears to be satisfied by filing a detainer, as was done here. See Rule 9(b)(ii), Speedy Trial Rules.

fingerprinted. The case was assigned to Judge Bauman for all purposes. Also on April 1st, the Government filed a notice of readiness as to defendant Ford.

7. On April 3, 1974, the Grand Jury voted a superseding indictment, charging Ford, Flynn and others unnamed, with the bank robbery, conspiracy, and related crimes. Flynn, who had appeared before the Grand Jury in March (at which time he was represented by Ford's present attorney, Ronald Chisholm), appears to have become a fugitive immediately thereafter. As of now, he still has not been apprehended. Accordingly, none of the "six-month period" has run as to Flynn. Rule 5(d), supra.

8. On April 15, 1974, Ford, now represented by Mr. Chisholm, entered a not guilty plea to the present indictment. Ford was given 10 days for motions. A hearing was also held on the Government's motion (first made on April 1st) for physical exemplars; when Ford refused to provide handwriting, handprinting, and hair samples, he was given one week to comply with this Court's order to furnish the same or else face contempt.

9. On April 25, 1974, following Ford's continued noncompliance with respect to the furnishing of hair samples, Ford was held in civil contempt by this Court and warned of the further possibility of criminal contempt. Also, on April 25th, this Court ruled on defendant's pre-trial motions, made that same day. But as of now, he still has not complied with this Court's order.

10. It follows that some or all of the period from April 1st to the present must be excluded from the computation of the six months period that began to run on February 8, 1974, for at least two reasons:

11. First, under Rule 5(a), there must be excluded "The period of delay while proceedings concerning the defendant are pending, including but not limited to ... pre-trial motions ... trial of other charges ... and the period during which such matters are sub judice." The Government's pre-trial motion that defendant furnish various physical exemplars, including fingerprints, handwriting, handprinting, and hair samples, was first made orally before Judge Tenney on April 1st and then, when the case was assigned to Judge Bauman, made in writing in motion papers filed April 2, 1974. This motion, and the attendant contempt proceedings, were not completed (if, indeed, they can be said to be completed as of now, since criminal contempt proceedings against Ford are still pending unless he purges himself of his civil contempt) until April 25, 1974, when this Court found Ford in civil contempt. Thus, the period from April 1st through April 25th should be excluded from computation of the six-month period.

12. Second, Rule 5(c)(1) excludes from the six-month period the period of time during which "evidence material to the government's case is unavailable, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period." Clearly, the Government has exercised due diligence in an attempt to obtain evidence of defendant's hair

samples -- evidence that may prove highly material if it becomes available and if a scientific comparison shows it to be similar to hairs recovered by the Government from the scenes of crimes charged in the instant indictment. There would appear to be some reasonable grounds, moreover, for believing that the defendant Ford will eventually make this evidence available, since he for some time also refused, but eventually complied, with Court orders to supply fingerprints (admittedly not nearly so vital in this case, since the bank robbers wore gloves) and handwriting and handprinting (also, admittedly, of less value on the facts of this case). Presumably, it was the hope of this Court that defendant would eventually also provide the hair samples that prompted the Court to find defendant only in civil contempt, despite his repeated and wilfull refusals to furnish the hair samples, and to thus provide him with the opportunity of purging his contempt. Alternatively, even if there is no longer any reasonable expectation that defendant will supply the hair samples (or, what is the same thing, supply them in time that a pre-trial scientific comparison can be made), surely defendant is estopped from invoking the benefits of the Speedy Trial Rule when he himself is the sole cause of the unavailability of potentially crucial evidence without which the Government will be forced, through no fault of its own, to go to trial less materially prepared than it ought to be. In short, it is submitted that, pursuant to Rule 5(c)(i), there should be excluded from the ~~six~~ month period the entire time from April 1st through the present (and continuing), in which defendant has refused to make material evidence

available -- at least until such time as the Court concludes that there is no reasonable ground for supposing that such evidence will become available within a reasonable period.

13. If the entire period from April 1st through the present is excluded from the six-months computation, only 51 days of the 180 days grace-period permitted by the Speedy Trial Rules has actually run, i.e., February 9, 1974, through March 31, 1974. Even if only the period from April 1st to April 25th is excluded, still, as of May 28th (when trial is scheduled), only 83 days of the 180 days will have run, so that a 90-day adjournment would still be very much in keeping with both the letter and the spirit of the Speedy Trial Rules. (The letter binds the Government as to being ready for trial, but does not bind the Court in actually setting a trial date, United States v. Cacciatore, 487 F.2d 240, 243, n. 2 (2d Cir. 1973) -- though, of course, it provides a kind of guideline against which the Court can judge the reasonable bounds of its discretion.)

II. THE INTERESTS OF JUSTICE AND SOUND  
JUDICIAL MANAGEMENT SUPPORT THE  
REQUESTED ADJOURNMENT, AND DEFENDANT  
IS NOT PREJUDICED BY IT.

14. The underlying fact which forces the Government to request this adjournment is that the co-defendant Flynn took flight (somewhat to the Government's surprise) at the time of his indictment and, in the few weeks that have since elapsed, has not been apprehended. While, of course, there is no guarantee that Flynn can be apprehended within any given period of adjournment, the Government respectfully submits that, given the very little time that (on any reckoning) has thus far elapsed since this case came on

before the Court, the Government is entitled to a reasonable further delay in order to try to apprehend him.

15. The reasons why the fugitive status of Flynn warrants an adjournment with respect to the incarcerated co-defendant Ford are two, each of which, incidentally, constitute grounds of delay under the Speedy Trial Rules, although even if they did not, the 90-day maximum placed on the Government's request would mean that the six-month period would not be exceeded in any event.

16. First, the need to try the case twice would put an unwarranted strain on the time and resources of the Government and this Court. This case involves no ordinary bank robbery, but rather a far-flung conspiracy which was calculated to conceal the identities of the robbers and which entailed, merely by way of preparation for the robbery, the commission of substantive crimes in at least three States. (The robbery itself netted over \$200,000.) At present the Government, even if it puts on a "thin" case, anticipates that it will have to call a minimum of 27 witnesses from all over the country. The Government submits that sound management warrants avoidance of having not one but two trials of this length, when there is a realistic possibility that the fugitive Flynn can be apprehended and there is no compelling reason to move forward as to the non-fugitive Ford.

17. Second, of course, the Court is already aware from the Government's representations at the April 25 hearing that the ~~fugitive~~ Flynn is a former felon (having at least three prior convictions for such crimes as armed robbery) considered by the FBI to be armed and dangerous and thus, in-

herently, a potential danger to Government witnesses. Specifically, this danger was brought to the attention of this Court on April 25 in the context of defendant's motion for the names of all the Government witnesses to whom photospreads were shown. The Government opposed this motion, stating:

"We do object to revealing the persons to whom the photo spreads were shown, because one of the defendants here is a fugitive armed and dangerous, and we feel there is a danger for that reason." (April 25 Hearing Transcript, pp.3-4)

In ruling in the Government's favor on this point, this Court stated to defense counsel (who, as noted, was previously counsel for the fugitive as well):

"Let me make this clear to you. I am not going to do anything that will identify the prospective identification witnesses to you. What I will do is to cause to be made available to you the spread of pictures so that you can see those pictures so that you can be prepared for whatever kind of identification hearings you want in the light of having seen the spread of the pictures. Is that clear? But I certainly am not going to have you told the names of the people who have made the identification, where one dangerous criminal is walking the streets. Now, I am not -- I have not lost my senses yet and I suggest that I am not about to do that."

(April 25 Hearing Transcript, p.8)

The Government submits that these same strong considerations that prompted this Court to deny identification of the Government witnesses to defense counsel prior to the Ford trial, so long as Flynn was a fugitive, just as strongly warrant adjournment of the trial altogether while Flynn remains a fugitive and while there is no compelling reason against a few months' adjournment for the purpose of trying to apprehend the fugitive.

18. Each of the above considerations finds support in particular provisions of the Speedy Trial Rules (although

it must be remembered that a 90-day adjournment, even if not "excluded" from the six-month rule computation, would not extend Ford's trial beyond the six-month period). To begin with, the general provision of Rule 5(h) providing for a "period of delay occasioned by exceptional circumstances" has been applied by our Court of Appeals to sanction delay in situations generally analogous to the present one. For example, in United States v. Rollins, 487 F. 2d (2d Cir. 1973), the Government, without even notifying the Court, failed to bring the case to trial within six months, partly from inexcusable inadvertance but partly because the Government's secret witness was himself under suspicion in another investigation that might be compromised if he took the stand and revealed his cooperation with the Government. The Court of Appeals, applying Rule 5(h), refused to dismiss the indictment, stating "the public interest in prompt adjudication must be balanced against competing interests." (487 F. 2d at 414). Similarly, in United States v. Cuomo, 479 F. 2d 688 (2d Cir. 1973), cert. denied \_\_\_\_\_ U. S. \_\_\_\_\_ (1974), a ninety-day adjournment to protect the safety and usefulness of an informant was held to be an "excluded period" in terms of the Speedy Trial Rules.

19. A more specific provision of the Speedy Trial Rules that is also very much in point is Rule 5(e), providing for "A reasonable period of delay when the

defendant is joined for trial with a co-defendant as to whom the time for trial has not run and there is good cause for not granting a severance."\* Applying this provision very recently in United States v. Cangliano, 491 F. 2d 906, 909, our Court of Appeals found "good cause" for not granting a severance in the mere fact that the defendant there had not specifically moved for a severance and did not, in any case, make any showing of prejudice suffered from the delay resulting from the lack of severance. Here, likewise, defendant Ford has neither specifically moved for a severance\*\* nor made any showing of prejudice from delay (as set forth below, there is no prejudice). But, additionally, in the present case there are the positive reasons to avoid severance, already set forth above, if possible, until Flynn is apprehended.

20. Finally, defendant Ford will not in any way be prejudiced by the proposed 90-day adjournment. Ford himself is just beginning the serving of several 8-10 year concurrent sentences imposed last February; his personal freedom will thus, not be in any way curtailed by the adjournment. As to the preparation of his defense,

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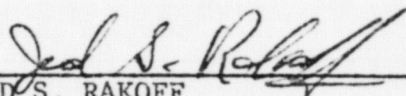
\* Rule 5(e) continues: "In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case." (emphasis supplied). As the Court of Appeals made clear in Cangliano, infra, this provision does not come into force with respect to a delay that would not exceed the six-month period as to either the defendant or the co-defendants. In the present case, as noted, a 90-day delay will not push the trial beyond the six month period as to either Ford or Flynn.

\*\* While, at the hearing on April 25, this Court, sua sponte, indicated that it might proceed to trial against Ford alone if Flynn were not apprehended by May 28 -- (hence the need for this present motion)--any actual severance ruling would have been premature on April 25 and none was made. At no time has defendant Ford moved for severance.

JSR:jp  
71-3397

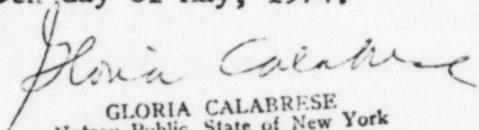
the adjournment can only aid it. In response to the defense's three extensive discovery motions (as limited by this Court's rulings on April 25), the Government has already supplied the defense with voluminous discovery, including everything this Court ordered made available to the defense, except for a few telephone records and FBI laboratory reports that are presently on their way to my office and will be turned over for inspection and copying just as soon as they arrive. Also, defense counsel Chisholm complained to me just yesterday<sup>(5/17)</sup> that the fact that defendant Ford was being held here in the Federal House of Detention while he (Chisholm) had his office in Boston, had made the defense's pre-trial preparation more difficult. However, if the adjournment is granted, Ford will undoubtedly be sent back to the Walpole, Massachusetts prison where he is serving his present sentence, and thus will be more easily available to Mr. Chisholm for pre-trial consultations.

WHEREFORE, the Government respectfully requests that this Court adjourn the trial of the instant case for approximately 90 days from the presently scheduled trial date (May 28, 1974) or until the apprehension of the fugitive co-defendant Flynn, whichever period is less.

  
JED S. RAKOFF  
Assistant United States Attorney

Sworn to before me this

16th day of May, 1974.

  
GLORIA CALABRESE  
Notary Public, State of New York  
No. 24-0535340  
Qualified in Kings County  
Commission Expires March 30, 1975

United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JAMES PATRICK FLYNN and  
RICHARD THOMSON FORD, a/k/a  
"Vincent A. Thomas," a/k/a  
"John A. August,"

Defendants.

NOTICE OF MOTION &  
AFFIDAVIT

S. 74 Cr. 336 (AB)

PAUL J. CURRAN

TEL. 264-~~3444~~ 6420

United States Attorney  
Attorney for USA

Due service of a copy of the within is hereby admitted.

New York, \_\_\_\_\_, 19\_\_\_\_

Attorney for

To

Attorney for

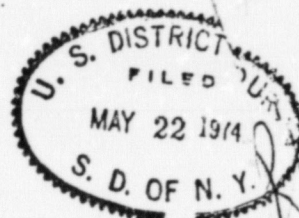
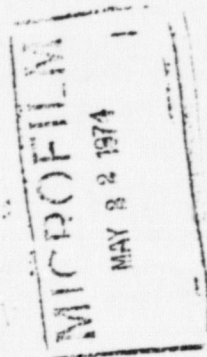
5/22/74

Motion granted.  
Theal date Aug 21, 1974

Boyle

For the Court

U.S.D.J.



SAS:ilf  
71-3397

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

-----X  
UNITED STATES OF AMERICA

-v-

: NOTICE OF MOTION

JAMES PATRICK FLYNN and  
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"John A. August",

: S. 74 Cr. 336 CBM

:

Defendants.

-----X  
SIRS:

PLEASE TAKE NOTICE that, at a time and place convenient to the Court, the Government will move this Court for an order adjourning the trial of the above-entitled case, presently scheduled for November 18, 1974, for a period of approximately 90 days or until the apprehension of the fugitive co-defendant Flynn, whichever period is shorter.

This motion is based on this notice, the annexed affidavit of Assistant United States Attorney Steven A. Schatten for the Government, and all the papers and proceedings heretofore in this case.

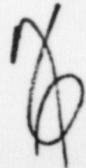
Dated: New York, New York  
November 1, 1974.

Yours, etc.

PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

By: 

STEVEN A. SCHATTEN  
Assistant United States Attorney



SAS:11f  
71-3397

TO: RONALD J. CHISHOLM, ESQ.  
Three Center Plaza  
Boston, Massachusetts 02108  
(Attorney for defendant Ford)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

-v-

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"Vincent A. Thomas," a/k/a  
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Defendants.

AFFIDAVIT

S. 74 Cr. 336 (CBM)

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

STEVEN A. SCHATTEN, being duly sworn, deposes and  
says:

1. I am an Assistant United States Attorney  
in the office of Paul J. Curran, United States Attorney for  
the Southern District of New York and have responsibility  
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SAS:ilf  
71-3397

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

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SAS:11f  
71-3397

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4. Upon his capture, Ford was turned over to Massachusetts authorities to stand trial on the prior state charges, and the federal warrant was lodged as a detainer. (About this same time, Ford wrote a letter to the Southern District of New York requesting a Speedy Trial on the federal charges.) On February 8, 1974, midway through his trial in Massachusetts, Ford changed his plea to one of guilty on charges of escape, assault with intent to murder, and related charges. He was sentenced forthwith to concurrent terms of 8 to 10 years imprisonment, which term he is presently serving. The judgments were entered that same date, February 8, 1974.

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fingerprinted. The case was assigned to Judge Bauman for all purposes. Also on April 1st, the Government filed a notice of readiness as to defendant Ford.

7. On April 3, 1974, the Grand Jury voted a superseding indictment, charging Ford, Flynn and others unnamed, with the bank robbery, conspiracy, and related crimes. Flynn, who had appeared before the Grand Jury in March (at which time he was represented by Ford's present attorney, Ronald Chisholm), appears to have become a fugitive immediately thereafter. As of now, he still has not been apprehended. Accordingly, none of the "six-month period" has run as to Flynn. Rule 5(d), supra.

8. On April 15, 1974, Ford, now represented by Mr. Chisholm, entered a not guilty plea to the present indictment. Ford was given 10 days for motions. A hearing was also held on the Government's motion (first made on April 1st) for physical exemplars; when Ford refused to provide handwriting, handprinting, and hair samples, he was given one week to comply with this Court's order to furnish the same or else face contempt.

9. On April 25, 1974, following Ford's continued noncompliance with respect to the furnishing of hair samples, Ford was held in civil contempt by this Court and warned of the further possibility of criminal contempt. Also, on April 25th, this Court ruled on defendant's pre-trial motions, made that same day. But as of now, Ford still has not complied with this Court's order.

10. On May 16, 1974, the Government filed a motion for an order adjourning the trial of this case for a period of 90 days or until the apprehension of the fugitive co-defendant Flynn, whichever period was shorter. The Government's motion was granted by Judge Bauman.

11. In August 1974, this case was reassigned to the Hon. Constance Baker Motley, United States District Judge, and trial was set down for November 18, 1974.

I. THE INTERESTS OF JUSTICE AND  
SOUND JUDICIAL MANAGEMENT  
SUPPORT THE REQUESTED AD-  
JOURNMENT, AND DEFENDANT  
IS NOT PREJUDICED BY IT.

12. The underlying fact which forces the Government to request this adjournment is that the co-defendant Flynn took flight at the time of his indictment and has not been apprehended. While, of course, there is no guarantee that Flynn can be apprehended within any given period of adjournment, the Government respectfully submits that, given all of the circumstances here involved the Government is entitled to an additional, reasonable further delay in order to try to apprehend him.

13. The reasons why the fugitive status of Flynn warrants an adjournment with respect to the incarcerated co-defendant Ford are two, each of which, incidentally, constitutes grounds of delay under the Speedy Trial Rules.

14. First, the need to try the case twice would put an unwarranted strain on the time and resources of the Government and this Court. This case involves no ordinary bank robbery, but rather a far-flung conspiracy which was calculated to conceal the identities of the robbers and which entailed, merely by way of preparation for the robbery, the commission of substantive crimes in at least three States. (The robbery itself netted over \$200,000.) At present the Government, even if it puts on a "thin" case, anticipates that it will have to call a minimum of 27 witnesses from all over the country. The Government submits that sound management warrants avoidance of having not one but two trials of this length, when there is a realistic possibility that the fugitive Flynn can be apprehended and there is no compelling reason to move forward as to the non-fugitive Ford.

15. Second, of course, the Court is already aware from the Government's representations at the October 16, 1974 hearing that the fugitive Flynn is a former felon (having at least three prior convictions for such crimes as armed robbery); and Flynn is considered by the FBI to be armed and dangerous and thus, inherently, a potential danger to Government witnesses. Specifically, this danger was brought to the attention of the Court on April 25 and again on October 16, in the context of defendant's motions for the names of

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Government witnesses. The Government opposed motions stating at the April 25 hearing

"We do object to revealing the persons to whom the photo spreads were shown, because one of the defendants here is a fugitive armed and dangerous, and we feel there is a danger for that reason." (April 25 Hearing Transcript, pp. 3-4)

In ruling in the Government's favor on this point on both occasions, this Court has indicated to defense counsel (who, as noted, was previously counsel for the fugitive as well):

"Let me make this clear to you. I am not going to do anything that will identify the prospective identification witnesses to you. What I will do is to cause to be made available to you the spread of pictures so that you can see those pictures so that you can be prepared for whatever kind of identification hearings you want in the light of having seen the spread of the pictures. Is that clear? But I certainly am not going to have you told the names of the people who have made the identification, where one dangerous criminal is walking the streets. Now, I am not -- I have not lost my senses yet and I suggest that I am not about to do that."

(April 25 Hearing Transcript, p.8)

See also October 16 Hearing Transcript.

The Government submits that these same strong considerations that prompted this Court on April 25 and once again on October 16 to deny identification of the Government witnesses to defense counsel prior to the Ford trial, so long as Flynn was a fugitive, just as strongly warrant adjournment of the trial altogether while Flynn remains a fugitive and while there is no compelling reason against a few months' adjournment for the purpose of trying to apprehend the fugitive.

16. Each of the above considerations finds support in particular provisions of the Speedy Trial Rules. To begin with, the general provision of Rule 5(h) providing for a "period of delay occasioned by exceptional circumstances" has been applied by our Court of Appeals to sanction delay in situations generally analogous to the present one. For example, in United States v. Rollins, 487 F.2d (2d Cir. 1973), the Government, without even notifying the Court, failed to bring the case to trial within six months, partly from inexcusable inadvertance but partly because the Government's secret witness was himself under suspicion in another investigation that might be compromised if he took the stand and revealed his cooperation with the Government. The Court of Appeals, applying Rule 5(h), refused to dismiss the indictment, stating "the public interest in prompt adjudication must be balanced against competing interests." (487 F.2d at 414). Similarly, in United States v. Cuomo, 479 F.2d 688 (2d Cir. 1973), cert. denied \_\_\_\_\_ U.S. \_\_\_\_\_ (1974), a ninety-day adjournment to protect the safety and usefulness of an informant was held to be an "excluded period" in terms of the Speedy Trial Rules.

17. A more specific provision of the Speedy Trial Rules that is also very much in point is Rule 5(e), providing for "A reasonable period of delay when the defendant is joined for trial with a co-defendant as to whom the time for trial has not run and there is good cause for not granting a severance."\* Applying this provision very

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\*Rule 5(e) continued: "In all other case the defendant should be granted a severance so that he may be tried within the time limits applicable to his case."

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recently in United States v. Cangliano, 491 F.2d 906, 909, our Court of Appeals found "good cause" for not granting a severance in the mere fact that the defendant there had not specifically moved for a severance and did not, in any case, make any showing or prejudice suffered from the delay resulting from the lack of severance. Here, likewise, defendant Ford has neither specifically moved for a severance nor made any showing of prejudice from delay (as set forth below, there is no prejudice). But, additionally, in the present case there are the positive reasons to avoid severance, already set forth above, if possible, until Flynn is apprehended.

18. Finally, defendant Ford will not in any way be prejudiced by the proposed 90-day adjournment. Ford himself is now serving of several 8-10 year concurrent sentences imposed last February; his personal freedom will thus, not be in any way curtailed by the adjournment. As to the preparation of his defense, the adjournment can only aid it. If the adjournment is granted, Ford will undoubtedly continue to remain in the Walpole, Massachusetts prison where he is serving his present sentence, and thus will be readily available to Mr. Chisholm for pre-trial consultations.

II. THE ADJOURNMENT WILL COMPORT WITH  
THE SPEEDY TRIAL RULES

19. Some or all of the period from April 1st to the present must be excluded from the computation of the six months period that began to run on February 8, 1974, for at least two reasons:

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20. First, under Rule 5(a), there must be excluded "The period of delay while proceedings concerning the defendant are pending, including but not limited to pre-trial motions ... trial of other charges ... and the period during which such matters are sub judice." The Government's pre-trial motion that defendant furnish various physical exemplars, including fingerprints, handwriting, handprinting, and hair samples, was first made orally before Judge Tenney on April 1st and then, when the case was assigned to Judge Bauman, made in writing in motion papers filed April 2, 1974. This motion, and the attendant contempt proceedings, were not completed (if, indeed, they can be said to be completed as of now, since criminal contempt proceedings against Ford are still pending unless he purges himself of his civil contempt) until April 25, 1974, when this Court found Ford in civil contempt. Thus, the period from April 1st through April 1st through April 25th should be excluded from computation of the six-month period.

21. Second, Rule 5(c)(i) excludes from the six-month period the period of time during which "evidence material to the government's case is unavailable, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period." Clearly, the Government has exercised due diligence in an attempt to obtain evidence of defendant's hair samples. There would appear to be some reasonable grounds, moreover, for believing that the defendant Ford will eventually make this evidence available, since he for some time also refused, but eventually complied, with Court orders to supply fingerprints (admittedly not nearly so vital in this case, since the bank robbers wore gloves) and handwriting and handprinting (also, admittedly, of less value on the facts of this case). Alternatively, even if there is no longer any reasonable expectation that defendant will supply the hair samples (or, what is the same thing, supply them in time that a pre-trial scientific comparison can be made), surely defendant is estopped from invoking the benefits of the Speedy Trial Rule when he himself is the sole cause of the unavailability of potentially crucial evidence without which the Government will be forced, through no fault of its own, to go to trial less materially prepared than it ought to be. In short, it is submitted that, pursuant to Rule 5(c)(i), there should be excluded from the six month period the entire

time from April 1st through the present (and continuing), in which defendant has refused to make material evidence available -- at least until such time as the Court concludes that there is no reasonable ground for supposing that such evidence will become available within a reasonable period.

22. If the entire period from April 1st through the present is excluded from the six-months computation, only 51 days of the 180 days grace-period permitted by the Speedy Trial Rules has actually run, i.e., February 9, 1974, through March 31, 1974. (The letter of the Speedy Trial Rules binds the Government to be ready for trial, but it does not bind the Court in actually setting a trial date, United States v. Cacciatore, 437 F.2d 240, 243, n. 2 (2d Cir. 1973) -- although it, of course, furnishes a kind of guideline against which this Court can utilize to ascertain the reasonable exercise of its discretion.)

WHEREFORE, the Government respectfully requests that this Court adjourn the trial of the instant case for approximately 90 days from the presently scheduled trial date (November 18, 1974) or until the apprehension of the fugitive co-defendant Flynn, whichever period is less.

*Steven A. Schatten*

STEVEN A. SCHATTEN  
Assistant United States Attorney

Sworn to before me this

1st day of November, 1974.

*Alma Hanson*

ALMA HANSON  
NOTARY PUBLIC, State of New York  
No. 24-6753450 (Qualified in Kings Co.)  
Certificate Expires on November 30, 1976

please take notice that a  
he within is a copy, was this day  
ed in the within entitled action,  
of the Clerk of this Court.

Y., \_\_\_\_\_, 19\_\_\_\_

Yours, etc.,

United States Attorney  
Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

the notice that the within  
presented for settlement and sig  
the Honorable  
District Judge, at the office of  
Room 601, United States Court-  
house, Borough of Manhattan,  
New York, on the \_\_\_\_\_ day of \_\_\_\_\_,  
10:30 o'clock in the \_\_\_\_\_ noon  
after as counsel can be heard.

Y., \_\_\_\_\_, 19\_\_\_\_

Yours, etc.,

United States Attorney  
Attorney for \_\_\_\_\_

Attorney for \_\_\_\_\_

# United States District Court

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JAMES PATRICK FLYNN and  
RICHARD THOMSON FORD, a/k/a  
"Vincent A. Thomas," a/k/a  
"John A. August",

Defendants.

## NOTICE OF MOTION & AFFIDAVIT

S. 74 Cr. 336 (CBM)

PAUL J. CURRAN

TEL. ~~254-3311~~

791-1931

United States Attorney  
Attorney for USA

Due service of a copy of the within is here-  
by admitted.

New York, \_\_\_\_\_, 19\_\_\_\_

Attorney for

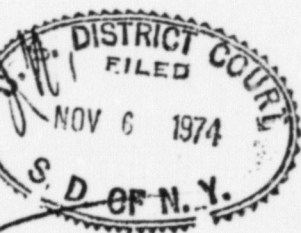
To

Attorney for

The within motion is  
granted. The trial  
of this action is scheduled  
to begin on February 18, 1975  
as to defendant - Ford.

Dated: N.Y., N.Y.  
11/4/74

SO ORDERED



Constance Baker Motley  
U. S. D. J.

MICROFILM

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U.S. MARSHAL

1974 MAR 25 PM 4:24

THE PRESIDENT OF THE UNITED STATES OF AMERICA

TO: WARDEN  
MASSACHUSETTS CORRECTIONAL INSTITUTION  
WALPOLE, MASSACHUSETTS

and United States Marshal  
Southern District of New York,  
District of Massachusetts

GREETING: 74 Cr. 279

YOU ARE HEREBY COMMANDED to have the body of

RICHARD THOMSON FORD now detained in the  
Massachusetts Correctional Institution  
Walpole, Massachusetts

under your custody as it is said, under safe and secure  
conduct before the Judges of our District Court within  
and for the Southern District of New York, at the United  
States Court House, Foley Square, New York, New York, on  
April 1, 1974 at 10:30 o'clock in the fore-  
noon, there to appear and plead to Indictment 74 Cr. 279,  
and immediately after the said RICHARD THOMSON FORD  
shall have been discharged or convicted and sentenced on  
said indictment, that you return him to the said Massachusetts  
Correctional Institution, Walpole, Massachusetts  
under safe and secure conduct, and have you then and  
there this writ.

WITNESS the Honorable DAVID N. EDELSTEIN, Chief  
Judge of the United States District Court for the Southern  
District of New York, at the United States Court House,  
Foley Square, New York, N.Y., this 25th day of March,  
1974.

*Raymond F. Burghes, Jr.*  
Clerk, United States District Court  
Southern District of New York

The within writ is hereby allowed.

*Constance Baker Motley*  
United States District Judge

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MAR 25 1974

74-25-74

States District Court

ERN DISTRICT OF NEW YORK

TATES OF AMERICA

-v-

THOMSON FORD, a/k/a  
A. Thomas, "a/k/a  
August, "

HABEAS CORPUS  
EQUENDUM ISSUE  
CT. 279

PAUL J. CURRAN

United States Attorney  
Attorney for U.S.A.

a copy of the within is here-

19

Attorney for

Attorney for

U.S. 73-508-8734

3 March 74 - I hereby certify and return that  
I have partially fulfilled this writ by transporting  
the within named Richard Thomson Ford  
from Walpole, Massachusetts Correctional  
Institution to Federal Detention House,  
West St. N.Y.C. and left original of writ  
with Warden, FDH, West St. N.Y.C.  
Thomas E. Fernandez  
as marked SDNY  
by George M. Carley  
DUSM, SDNY

6-14-74 I have this day removed Richard T. Ford  
from FDH, N.Y. N.Y. and on the same day removed  
him to M.C.I. Walpole Mass.

John A. Birkmas Jr.  
James Hartigan sep.

DDB:cf  
71-3397

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

*Writ Dec  
Ret 9/2/75*

-----X

UNITED STATES OF AMERICA :

-v- :

AFFIDAVIT

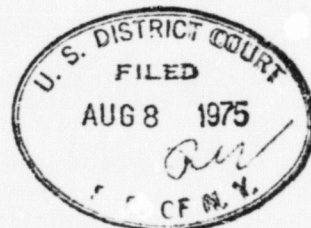
S 74 Cr. 336 (CBM)

RICHARD FORD, :

Defendant . :

-----X

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK )



DON D. BUCHWALD, being duly sworn,

deposes and says that he is an Assistant United States Attorney for the Southern District of New York; that he has charge of the prosecution of the above named case; that the defendant RICHARD FORD has been indicted by the Grand Jury for the Southern District of New York for the unlawful robbery of a bank in violation of 18 U.S.C. §2113(a).

The indictment was filed in the United States District Court for the Southern District of New York on

. The defendant is now confined in Massachusetts Correctional Institute - Norfolk as Prisoner No. 21646 on a charge of violating sections of state law involving prison escape and attempted murder and his confinement will terminate at a time unknown to deponent.

*[Handwritten signature]*

DDB:cf  
71-3397

That the case is now on the calendar of the  
United States District Court for the Southern District  
of New York for September 2, 1975 at 9:30 a.m. in Courtroom  
318  
and it is necessary that the defendant appear and stand  
trial at that time.

WHEREFORE, your deponent respectfully prays  
that a writ of habeas corpus ad prosequendum issue,  
directing the Warden of Massachusetts Correctional Institute -  
Norfolk, Massachusetts  
and the United States Marshal for the Southern District  
of New York to produce the above named defendant in  
the United States District Court for the Southern  
District of New York, United States Court House, Foley  
Square, New York, N.Y., on September 2, 1975 at 9:30 a.m. in  
Courtroom 318  
and after the said defendant has been discharged or  
convicted and sentenced on said indictment, to return  
him to the Massachusetts Correctional Institute - Norfolk

*Don D. Buchwald*

DON D. BUCHWALD  
Assistant United States Attorney

Sworn to before me this

8th day of August, 1975

*Alma Hanson*

ALMA HANSON  
NOTARY PUBLIC, State of New York  
No. 24-5763450 Qualified in Kings Co.  
Commission Expires March 30, 1976

CERTIFICATE OF SERVICE

September 27, 1976

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

David P. Goffel



